

## NOTICE OF FILING

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### Details of Filing

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A handwritten signature in blue ink, reading 'Warwick Soden'.

Registrar

### Important Information

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## FURTHER AMENDED REPLY

(Amended on 26 September 2018 pursuant to the order of Murphy J dated 24 September 2018)

No. QUD714 of 2016

Federal Court of Australia  
District Registry: Queensland  
Division: General

**HANS PEARSON**

Applicant

**STATE OF QUEENSLAND**

Respondent

### A. Introduction

1. In this Further Amended Reply (**Reply**) the Applicant:
  - (a) adopts and refers to (without re-defining in this Reply) the terms defined in the Third Amended Statement of Claim (**3ASOC**); and
  - (b) utilises, where relevant, the content headings set out in the 3ASOC.
2. The Applicant:
  - (a) adopts the admissions made by the Respondent in its Further Amended Defence filed 24 August 2018 ~~5 June 2017~~ (**the Defence**);
  - (b) joins issue with those matters which are either denied or not admitted in the Defence.
3. With regard to the paragraphs of the Defence (or those parts of a paragraph of the Defence) in which the Respondent does not plead to facts pleaded in the 3ASOC on the basis that the pleaded facts are not relevant to issues raised by the Applicant or that the facts are relevant only to some or all of the Group Members, the Applicant says that:-

~~(a) each paragraph (which is not pleaded to by the Respondent) raises facts which are relevant to a common issue to the proceedings;~~

~~(b) as those facts have not been specifically denied they are deemed to be admitted pursuant to r 16.07(2) of the *Federal Court Rules* 2011 (**Rules**).~~

3A. As to paragraph 1(a) of the Defence, the Applicant denies the allegations and refers to and repeats paragraphs 171 to 175 of this Reply.

4. As to paragraph 1(b) of the Defence, the Applicant:

(a) denies that the causes of action referred to therein ~~for breach of trust and breach of fiduciary duty~~ arose before 4 March 1992 and repeats and relies on paragraphs 265 to 271 of the 3ASOC;

(b) says that the Respondent as trustee was and remains under a continuing duty to account in equity when called upon to do so by the Applicant (or a Group Member) as beneficiary of that trust;

(c) refers to and relies upon paragraph 141(c) of this pleading;

(d) repeats and relies upon paragraphs 256 and 257 of the 3ASOC.

4A. As to paragraph 2(b) of the Defence, the Applicant says that paragraph 2(j) of the 3ASOC is not inconsistent with the trust as pleaded because, as a matter of law, the Respondent as trustee was under a duty to get in trust property, including the wages earned by each Group Member that ought to have been paid by the Group Member's employer to or at the direction of a protector (including the protector of islanders), or superintendent (or district officer or manager, as the case may be).

5. As to paragraph 4 of the Defence, the Applicant:

(aa) in respect of paragraph 4(c)(i), the Applicant does not admit the allegation that the Applicant (as a Claimant) had entered into an employment agreement pursuant to the provisions of the 1939 Act and regulations because the Respondent is unable to produce any such agreement demonstrating that that was the case;

(a) in respect of paragraph 4(c)(ii), except to the extent the payment of any wages is expressly admitted in this pleading, does not admit the allegation as it is not within the Applicant's knowledge;

(b) in respect of paragraph 4(c)(iv), does not admit that money was withdrawn from the relevant accounts up to 18 January 1962 save as pleaded at paragraphs 235 to 241 of the 3ASOC as this is information within the knowledge of the Respondent and the Applicant cannot plead further until discovery has taken place;

- (c) in respect of paragraph 4(c)(v); :
- (i) says that the Respondent's pleading constitutes a deemed admission pursuant to r 16.07(2) of the Rules as the Respondent's pleading is no answer to the Applicant's allegation and that allegation is not specifically denied;
  - (ii) insofar as the Respondent is alleging that deductions to the Welfare Fund (as defined in paragraph 61 of the ASOC) were required to occur in accordance with the terms of the 1939 Act and the 1945 Regulations, denies the allegation for the reasons pleaded in paragraphs 260 to 261C and 261E of the ASOC;
- (d) in respect of paragraph 4(c)(vi)(1):
- (i) denies the allegation because the matters pleaded in paragraph 237(a) – (f) of the Defence do not lead to the conclusion that the Applicant was provided with any documentation or provided with any information showing the matters pleaded in paragraph 4(f)(v) of the 3ASOC;
  - (ii) refers to and relies on the matters pleaded in paragraphs 120(a) – (f) of this Reply;
- (e) in respect of paragraph 4(c)(vii):
- (i) says that if all of the Claimants (and like persons) had been paid the wages owing to them then there would have been no need for the Respondent to institute and keep on foot for a number of years, the reparation scheme;
  - (ii) says that in paragraph 2 of the 3ASOC the Applicant and Group Members are collectively defined as Claimants;
  - (iii) says that in paragraph 5(a) of the Defence the Respondent pleads that it does not know the identity of any Group Member;
  - (iv) in the premises of (ii) and (iii), says that the Respondent's pleading is embarrassing and should be struck out by virtue of the Respondent's own pleading as there is no basis for the denial in paragraph 4(c)(vii) of the Defence;
  - (v) joins issue with the denial therein and refers to and relies on the matters pleaded in paragraphs 120, 121, 122, 146, 147 and 149 of this pleading and repeats and relies on the matters pleaded in paragraph 4(g) of the 3ASOC;

- (f) in respect of paragraph 4(c)(viii), joins issue with the denial therein and refers to and relies on the matters pleaded in paragraphs 118, 120, 121, 122, 133 and 146 to 149 of this pleading and repeats and relies on the matters pleaded in paragraph 4(h) of the 3ASOC.

**C. The Director of Native Affairs**

6. The Applicant admits paragraph 7 of the Defence.
7. The Applicant admits paragraph 8 of the Defence.
8. The Applicant admits paragraph 9(b) of the Defence.
9. As to paragraph 10 of the Defence, the Applicant denies the allegations therein because the 1967 Amendment Act did not include any section numbered 10.
10. As to paragraph 15(b) of the Defence, the particular acts done for and on behalf of the Respondent are any of the acts pleaded in the 3ASOC as having been done by the Director and the protectors (including where relevant the protector of islanders) and superintendents for each of the Districts, reserves, islanders reserves and missions.

**D. The Applicant**

11. As to paragraph 16 of the Defence, the Applicant:
- (a) in respect of paragraph 16(d), says that part of the Applicant's money held on trust for him by the Respondent was not returned to him until 25 May 1964 with the consequence that the Respondent's financial affairs were compulsorily managed under the 1939 Act and regulations until at least that date, being a date after the Applicant was granted his exemption under the 1939 Act as pleaded at paragraphs 18 and 230 of the 3ASOC;

**Particulars**

- A. Letter from the protector of aboriginals at Innisfail to the superintendent of Palm Island aboriginal settlement dated 25 May 1964.
- (ab) in respect of paragraph 16(f), says that the Applicant visited his uncle on Palm Island in the week prior to Christmas 1958 or 1959 and shortly thereafter commenced working directly for the superintendent at Palm Island;
- (b) in respect of paragraph 16(h):

- (i) admits paragraph 16(h)(i);
- (ii) does not admit paragraphs 16(h)(ii) to (iv) as these are matters are solely within the knowledge of the Respondent;
- (c) in respect paragraph 16(l), joins issue with the denial therein and repeats and relies on paragraph 16(1)(l) of the 3ASOC.

12. As to paragraph 18 of the Defence, the Applicant:

- (a) admits paragraphs 18(a), (b) and (c);
- (b) denies the allegations in paragraph 18–(d) because of the matters pleaded in paragraph 11(a) of this pleading.

## **E. Legislation**

### *Applicable dates*

13. The Respondent admits the allegations in paragraph 19 of the Defence.

13A. As to paragraph 20A of the Defence, the Applicant admits subparagraphs (a) and (e) to (h).

14. As to paragraph 21 of the Defence, the Applicant:

- (a) subject to (c) below, admits paragraph 21(a);
- (b) admits paragraph 21(b);
- (c) repeats and relies on paragraph 21 of the 3ASOC and says that the Islander Act was enacted for the preservation and protection of Torres Strait Islanders in Queensland with Part IV of the 1939 Act (entitled “Preservation and Protection of Aboriginals”) and the bulk of the provisions of that Part applying to Torres Strait Islanders on a *mutatis mutandis* basis by virtue of s 21 of the Islander Act.

14A. As to paragraph 22A of the Defence, the Applicant admits that the quotation set out in paragraph 22A forms part of the introductory words to section 6 of the Islander Act.

15. As to paragraph 23(e) of the Defence:

- (a) in respect of paragraph 23(b), the Applicant denies that the 1945 regulations were made pursuant to section 12 of the 1939 Act on the basis of the matters pleaded at paragraphs 261, 261B, 261C, 261D, 261E and 261K of the 3ASOC;
- (b) in respect of paragraph 23(c):

- (i) the Applicant admits the allegations contained therein save that the amendment said to have taken place on 1 October 1964 took place on 3 October 1964 but with effect from 1 October 1964;
- (ii) says that the Applicant has defined the 1945 regulations in paragraph 2(d) of the 3ASOC such that amendments to those regulations are incorporated into the definition thereof;
- (c) in respect of paragraph 23(d), the Applicant says that sub-clause (5) to section 12 was inserted into the 1945 regulations by way of an amendment to the 1945 regulations made 13 September 1956 and gazetted on 15 September 1956.

15A. As to paragraph 24 of the Defence, the Applicant:

- (a) admits that the Islander regulations were in force until 28 April 1966;
- (b) does not admit that the Islander regulations were made pursuant to sections 6 of the Islander Act because a number of the amendments to the Islander regulations (including regulations replacing the Islander regulations from time to time) were also made pursuant to the 1939 Act.

16. As to paragraph 25(a) of the Defence, the Applicant admits the allegations contained therein.

***Protectors and superintendents***

17. As to paragraph 26 of the Defence, the Applicant:

- (a) admits paragraphs 26(a), (c) and (e);
- (b) denies the allegation in paragraph 26(b) because s 3(a) of the 1939 Act provided as follows: “All districts, reserves, settlements and institutions for aboriginals existing at the commencement of this Act and not situated upon a Torres Strait island within the meaning of ‘The Torres Strait Islanders Act of 1939,’ shall remain as such and be subject to this Act in all respects;”;
- (c) denies the allegations in paragraph 26(d) because s 8(1) of the 1939 Act provided as follows: “The Governor in Council may by Proclamation declare any portion or portions of the State to be a district or districts for the purposes of this Act, and may in like manner abolish or vary the boundaries of any district, or join any two or more districts together to form one district.”;

- (d) says that the matters pleaded by the Respondent in paragraph 26 of the Defence do not operate so as to deny the allegation set out in paragraph 26 of 3ASOC.
18. As to paragraph 27 of the Defence, the Applicant:
- (a) admits the allegations in paragraph 27(a) and (c);
- (b) denies the allegations in paragraph 27(b) because s 3(a) of the 1939 Act provided as follows: “All districts, reserves, settlements and institutions for aboriginals existing at the commencement of this Act and not situated upon a Torres Strait island within the meaning of ‘*The Torres Strait Islanders Act of 1939*,’ shall remain as such and be subject to this Act in all respects;”;
- (c) says that the matters pleaded by the Respondent in paragraph 27 of the Defence do not operate so as to deny the allegation set out in paragraph 27 of the 3ASOC.
19. As to paragraph 28 of the Defence, the Applicant:
- (a) denies the allegation because s 9(4) of the 1939 Act provided as follows: “The Governor in Council may establish on any reserve a settlement for the preservation and protection of aboriginals, and in addition to the superintendent may appoint such resident or visiting medical officers and such other officers as may be necessary.”;
- (b) says that the matters pleaded by the Respondent in paragraph 28 of the Defence do not operate so as to deny the allegation set out in paragraph 28 of the 3ASOC.
20. The Applicant admits the allegation in paragraph 29(b) of the Defence.
21. As to paragraph 30 of the Defence, the Applicant:
- (a) as to paragraph 30(b):
- (i) admits that s 8(2) of the 1939 Act provided in part that the protectors would be responsible to the Director for the administration of the 1939 Act in the districts to which they were assigned;
- (ii) says that the matters pleaded in paragraph 30(b) of the Defence do not operate so as to deny the allegation in paragraph 30(b) of the 3ASOC;
- (b) as to paragraph 30(c):
- (i) repeats and relies upon paragraph 21(a)(i) of this pleading;
- (ii) says that the matters pleaded in paragraph 30(c) the Defence do not operate so as to deny the allegation in paragraph 30(c) of the 3ASOC;

- (c) admits the allegations in paragraph 30(d).
22. The Applicant admits the allegation in paragraph 32(b) of the Defence.
23. The Applicant does not admit paragraph 34 of the Defence as the allegation is not within the knowledge of Applicant and cannot plead further until discovery takes place and says further that the matters pleaded in paragraph 34 of the Defence do not operate so as to deny the allegations in paragraph 34 of the 3ASOC that Palm Island (whether as pleaded in paragraph 34 of the 3ASOC or paragraph 34 of the Defence) was classified as a ‘settlement’ on a reserve for the purposes of the 1939 Act and regulations, and as a ‘community’ for the purposes of the 1965 Act and regulations.
- 23A. The Applicant admits the allegations in paragraph 37 of the Defence.

***Defined terms***

24. As to paragraph 38 of the Defence, the Applicant admits the additional wording identified by the Respondent in each of paragraphs 38(a)(ii), (iii), (iv) (save that there is no second instance of “aboriginal” in the provision referred to in paragraph 38(a)(iv) of the Defence, but there is a reference to “aboriginals”) and (vi).

***Employment of Aborigines and Islanders***

25. As to paragraph 40 of the Defence, the Applicant:
- (a) admits the allegations in paragraphs 40~~(b)~~-(d), (h) and (i);
- (ab) for paragraph 40(b):
- (i) joins issue with the denial pleaded therein;
- (ii) repeats and relies on paragraph (c) below;
- (iii) denies that the section 14(3) provided as set out at paragraph 40(b) of the Defence because section 14(3) did not so provide and instead provided as follows:
- “Every person employing an aboriginal under the provisions of this Act shall forthwith upon permission being granted by a protector enter into a written agreement with such aboriginal in the presence of such protector, a person authorised by him, a justice of the peace, a member of the Police Force, or an officer of the Public Service. Every agreement relating to the employment of aboriginals under this Act shall be in the prescribed form

and shall contain particulars of the names of the parties thereto, the nature of the service to be rendered by such aboriginal, the period during which such employment is to continue, the wages or other remuneration to be paid or given by the employer for such service, the nature of the food and accommodation to be provided for such aboriginal, and any other conditions which may be prescribed.

Every such agreement shall be attested by the protector or person authorised by him before whom it is entered into.”

- (ac) for paragraph 40(c):
- (i) joins issue with the denial pleaded therein;
  - (ii) says that prescribed Form 7 of the Schedule to the 1945 regulations required the signature and right thumbprint of the aboriginal intending to be employed under the 1939 Act in order to constitute an employment agreement for the purposes of s 14(3) of the 1939 Act;
  - (iii) says that s 15(4) of the 1939 Act required that an aboriginal was unable to be employed or carried on board a vessel trading in Queensland waters unless the employment agreement was signed by the aboriginal in the presence of the shipping master, after it was carefully explained to the aboriginal by the shipping master;
- (b) for paragraph 40(ed):
- (i) admits that s 14(3) of the 1939 Act also permitted the written employment agreement to be entered into in the presence of not only the protector but also a person authorised by the protector, a justice of the peace, a member of the police force, or an officer of the public service;
  - (ii) admits that s 14(3) of the 1939 Act also permitted an employment agreement to be attested by a person authorised by the protector before whom the employment agreement was entered into;
  - (iii) otherwise repeats and relies on the allegation in paragraph 40(ed) of the 3ASOC;
- (c) for paragraph 40(e):
- (i) joins issue with the Respondent’s denial and repeats and relies on paragraph 40(e) of the 3ASOC and further relies on paragraph 45(b) of this Reply;

- (ii) says that the operation of section 14(4) of the 1939 Act had a direct impact on the maximum period of employment of an aboriginal, which is reflected in the marginal notes to that provision, namely “maximum period of employment” admits that s 14(4) of the 1939 Act used the word “aboriginal” rather than “aborigine” but denies that the protector could fix the period for which a permit to employ an aboriginal could remain in force, other than in circumstances where the permit did not exceed 12 months;
  - (d) for paragraph 40(f), denies the allegation therein because s 14(5) of the 1939 Act provided as follows: “Unless otherwise approved by the Director, the wages payable to an aboriginal employed under this Act shall be not less than prescribed, nor shall the food, accommodation, and other necessaries be of lower standard than as prescribed.”;
  - (e) for paragraph 40(g), the Applicant denies the allegation therein and repeats and relies on the matters pleaded in subparagraph (d) above;
26. As to paragraph 41 of the Defence, the Applicant ~~admits the allegation therein.~~ :
- (a) admits that the reference to section 39 at paragraph 41(b) of the 3ASOC should instead be a reference to section 33 of the Islander Act;
  - (b) as to paragraph 41(a) of the Defence, denies that the reference to “Superintendent” was to mean the Island Council, because section 21 of the Islander Act provided that the term “Superintendent” in section 33 only of the 1939 Act was to mean the Island Council;
  - (c) as to paragraph 41(b) of the Defence:
    - (i) joins issue with the denial therein;
    - (ii) for (b)(i):
      1. admits that the 1945 regulations were expressed to be made pursuant to the provisions of the 1939 Act;
      2. denies that the 1945 regulations did not apply to Islanders because section 21 of the Islander Act, properly construed, operated to apply to Islanders the provisions of the 1939 Act referred to therein, and in order to give effect to the words of section 21 that the 1939 Act “shall, subject as hereinafter provided, be read and construed with [the Islander Act] and shall, mutatis mutandis, apply and extend for the purposes of [the Islander Act],” it was necessary to apply some of the 1945 regulations

pertaining to those sections of the 1939 Act referred to in section 21 of the Islander Act, to Islanders;

3. says that section 21 of the Islander Act also contained the following words: “For the purpose of so reading, construing, applying and extending any such enactment of [the 1939 Act], but without limiting the generality of this section...”;
  4. says that the Respondent’s pleading is embarrassing because it is inconsistent with paragraph 258(c)(iii) of the Defence which refers to “Group Members who were Islander workers under the 1939 Act and 1945 regulations as applied by the Islander Act and regulations...”
- (iii) for (b)(ii), in the premises of the matters pleaded in paragraph (ii) above, denies that Forms 7 and 8 of the Schedule to the 1945 regulations did not apply to Islanders;
  - (iv) for (b)(iii), admits that the Islander regulations did not specifically use the phrase “pocket money,” but otherwise denies the allegation because of the matters pleaded in paragraph (ii) above and because the 1945 regulations, including Form 7 thereof, referred to pocket money;
  - (v) admits paragraph (b)(iv);
  - (vi) for (b)(v), says that pursuant to section 17(iv) of the Islander Act the council was empowered to make and levy a tax (therein referred to as the “island tax”) on the basis set out therein, and that by section 17(v) of the Islander Act: “The island tax shall be founded on the budget and shall be made and levied by the Council by resolution and shall be collected by the Council: Provided, however, that the protector shall, if required by the Council, as far as practicable collect the island tax by deductions from the earnings of Islanders.”;
  - (vii) for (b)(vi), admits that the Islander regulations contained no provision for contribution by Islanders to a welfare fund, but otherwise denies the allegations because of the matters pleaded in (ii) above;
  - (viii) for (b)(vii), does not admit that Islanders did not contribute to the Welfare Fund during the Claim Period because it is not within the Applicant’s knowledge;
  - (ix) for (b)(viii), denies that the pleading is embarrassing and says that the Applicant cannot otherwise plead to the allegation because it is unclear to which part of the pleading the allegation refers;

- (x) for (b)(ix), denies the allegation because section 83 of the 1966 regulations does refer to “pocket money”;
- (xi) for (b)(x), in the premises of paragraphs (ii) to (iv) and (vi) to (x), denies the allegation.

27. As to paragraph 42 of the Defence, the Applicant:

- (a) admits the allegations in paragraphs 42(a) and (b) therein;
- (b) denies the allegation in paragraph 42(c) and repeats and relies on paragraph 26(c) of this Reply;

28. As to paragraph 43 of the Defence, the Applicant:

- (a) save as set out in (b), ~~the Applicant~~ admits the allegations therein save that for paragraph 43(b)(v), by virtue of the operation of s 13 of the 1939 Act, the Form 8 came into operation on 23 December 1961;
- (b) for paragraph 43(c) of the Defence, denies the allegation for the reasons pleaded in paragraph 26(c) herein;
- (c) save as set out in (b), otherwise says that the Respondent’s pleading constitutes a deemed admission pursuant to r 16.07(2) of the Rules as the Respondent’s pleading is no answer to the Applicant’s allegation that the prescribed minimum level of wages was set out in Form 8 of the Schedule to the 1945 regulations and that allegation is not specifically denied.

28A. As to paragraph 44 of the Defence, the Applicant:

- (a) as to paragraph 44(c)(i), says that the Islander regulations were made on 1 August 1946 but gazetted on 3 August 1946;
- (b) as to paragraph 44(c)(ii)(A), says the paragraph 3(d) of the Islander regulations provided as follows:

“(d) *The Director of Native Affairs will issue permits to recruit Aboriginals on the East Coast of the Peninsula north of Cooktown and on the West Coast of the Peninsula and where such Aboriginals are secured, the Director of Native Affairs may permit them to work for a period of 90 days before signing Articles at Thursday Island, conditional that the wages set out in paragraph (a) of this Regulation shall operate from the day that the Aboriginal joins the vessel.*”;

- (c) as to paragraph 44(c)(ii)(E), denies the allegation because the requirement set out in paragraph 3(f) of the Islander regulations applied to employers and not to employees;
- (d) admits the allegations in paragraphs 44(c)(iii) to (xi).
29. As to paragraph 46 of the Defence, the Applicant admits paragraphs 46(b) and (c).
- 29A. As to paragraph 46A of the Defence, the Applicant:
- (a) denies that the 1945 regulations did not apply to Islanders and repeats and relies paragraph 26(c) herein
- (b) for paragraph 46(c), denies that the Form 7 only required the protector to sign it if the protector was giving the direction contemplated within the terms of that Form, because Form 7 required the signatures of the employer and employee to be witnessed by the protector or a person authorised by the protector, a justice of the peace, member of the police force, or officer of the public service;
- (c) the paragraph 46(d)(i), denies the allegation because the wording of the Form 7 stated, immediately above the space for the signature of the employer and the witness to the signature of the employer, the words “In witness whereof *the parties* hereto have affixed their signatures this [blank] day of [blank], in the year [blank]” (emphasis added).
- 29B. As to paragraph 46B of the Defence, the Applicant, denies that the 1945 regulations did not apply to Islanders and repeats and relies paragraph 26(c) herein
30. As to paragraph 47 of the Defence, the Applicant:
- (a) admits paragraphs 47(a)(i), (iv) and (v);
- (b) denies paragraph 47(a)(ii) because s 8(1)(b) of the 1965 Act provided as follows: “(b) an Aborigine, part-Aborigine or person having a strain of Aboriginal blood declared by the Director pursuant to this Act to be an assisted Aborigine and every child of such an Aborigine, part-Aborigine or person who, pursuant to section nineteen of this Act, is named in such declaration;”;
- (c) denies paragraph 47(a)(iii) because s 8(1)(c) of the 1965 Act provided as follows: “(c) an Aborigine, part-Aborigine or person having a strain of Aboriginal blood declared by a Magistrates Court pursuant to this Act to be in need of care under this Act and every child of such an Aborigine, part-Aborigine or person who, pursuant to section twenty of this Act, is named in such declaration;”
- (d) admits paragraph 47(b)(i), (iv) and (v);

- (e) denies paragraph 47(b)(ii) because s 8(2)(b) of the 1965 Act provided as follows: “(b) an Islander declared by the Director pursuant to this Act to be an assisted Islander and every child of such an Islander who, pursuant to section nineteen of this Act is named in such declaration;”;
- (f) denies paragraph 47(b)(iii) because s 8(2)(c) of the 1965 Act provided as follows: “(c) an Islander or person have a strain of Island blood declared by a Magistrates Court pursuant to this Act to be in need of care under this Act and every child of such an Islander or person who, pursuant to section twenty of this Act is named in such declaration;”
- (g) admits paragraphs 47(c), (d), (e), (f), (g);
- (h) denies paragraph 47(h) because s 97 of the 1966 regulations provided as follows: “97. Where the District Officer or Manager requires that the whole or any portion of the wages, allowances or other moneys due to any assisted person be paid to him by an employer, such request must be complied with and the official receipt of such District Officer or Manager shall be good and sufficient discharge to such employer in respect of such payment;”;
- (i) for paragraph 47(i), does not admit the conclusions of law set out therein for the reasons pleaded above.

***Pocket money***

31. As to paragraph 48 of the Defence, the Applicant;

- (a) for paragraph 48(b):
  - (i) denies that the 1966 regulations do not refer to “pocket money” because it is not the case and that term is used in s 83 of the 1966 regulations;
  - (ii) denies that Form 14 of the 1966 regulations does not refer to “pocket money” because it is not the case and Form 14 provides that the 1966 regulations shall so far as applicable be deemed to be incorporated into the Form 14 and shall be as binding upon the parties to the employment agreement as those regulations had been repeated in the Form 14 as part of that Form;
  - (iii) says that in any event the 1966 regulations referred to “wages, allowances or other moneys due to any assisted person” and that that phrase is sufficiently wide so as to countenance the payment of pocket money to the assisted person;

- (b) for paragraph 48(c):
  - (i) denies that the 1945 regulations did not apply to the Applicant after 18 January 1962 because the Applicant's wages continued to be held on trust by the Respondent after that date;
  - (ii) admits that the 1966 Act and regulations did not apply the Applicant except to the extent that the Applicant's wages continued to be held on trust by the Respondent.
  - (iii) denies the allegations in paragraph 48(d) and repeats and relies on paragraph 26(c) of this Reply;

32. As to paragraph 49 of the Defence, the Applicant:

- (a) for paragraph 49(b), repeats and relies on paragraph 31(b)(i) of this pleading;
- (b) admits paragraph 49(d);
- (c) for paragraph 49(f), repeats and relies upon paragraph 31(b)(ii) of this pleading;
- (d) denies the allegations in paragraph 49(g) and repeats and relies on paragraph 26(c) of this Reply;

32A. As to paragraph 50(b) of the Defence, the Applicant:

- (a) admits subparagraphs (b)(i) and (b) (ii);
- (b) further says that:
  - (i) by section 14(6), a protector could direct employers or any employer to pay the whole or any portion of the wages of aboriginals to himself or some other person on his behalf, and any employer who failed to observe such direction was deemed to have not paid such wages;
  - (ii) by section 16(1)(b) of the 1939 Act, the protector, subject to the approval of the Director, was empowered to, in his own name, sue for, recover, or receive any money or other property due or belonging to an aboriginal, or damages for any conversion of or injury to any such property;

32B. As to paragraph 50A of the Defence, the Applicant joins issue with the Respondent's denial.

***Exemptions from statutory control***

33. As to paragraph 53 of the Defence, the Applicant:

- (a) repeats and relies upon paragraph 31(b)(ii) of this pleading;
- (b) says that by virtue of sections 24 and 29(2) of the 1965 Act, the 1965 Act provided a similar system with respect to the exemption of statutory control for an assisted aborigine or assisted islander to that system under the 1939 Act as pleaded in paragraphs 52 and 53 of the 3ASOC.

33A. As to paragraph 53A of the Defence, the Applicant:

- (a) denies the allegations in paragraph 53A(a) because the Islander Act did not provide as pleaded therein;
- (b) admits paragraph 53A(b);
- (c) does not admit paragraphs 53A(c) to (g);

### ***Property***

- 34. As to paragraph 54 of the Defence, subject to the matters pleaded in paragraph 24 of this pleading, the Applicant admits the allegations therein.
- 35. As to paragraph 56 of the Defence;
  - (a) the Applicant repeats and relies upon paragraph 31(b)(ii) of this pleading;
  - (b) denies that the pleading is prejudicial and embarrassing because a similar system did operate under the 1965 Act, including by virtue of section 28 of that Act.
- 36. As to paragraph 57(b) of the Defence, the Applicant repeats and relies upon paragraph 31(b)(ii) of this pleading.

### ***Trust funds***

- 37. As to paragraph 58 of the Defence, the Applicant:
  - (a) says that the word used in s 12(1) and (2) of the 1945 regulations is “aboriginals” and not “aboriginal”;
  - (b) does not otherwise admits the allegation in (c).
- 38. As to paragraph 59 of the Defence, the Applicant:

- (a) for paragraph 59(a):
  - (i) subject to the matters pleaded in paragraph 24 of this pleading, admits the allegation in paragraph 59(a)(i);
  - (ii) admits the allegation in paragraph 59(a)(ii);
- (b) for paragraph 59(b):
  - (i) admits the allegations in paragraphs 59(b)(i) and (ii) to the extent that the matters pleaded therein are referable to the 1945 regulations as originally made;
  - (ii) admits the allegation in paragraph 59(b)(iii);
  - (iii) admits the allegation in paragraph 59(c);-
  - (iv) does not admit the allegation in 59(d).

39. As to paragraph 60 of the Defence, the Applicant:

- (a) for paragraph 60(a):
  - (i) subject to the matters pleaded at paragraph 24 herein, admits paragraph 60(a)(i);
  - (ii) admits paragraph 60(a)(ii) but says that the reference in s 12(4) of the 1945 regulations to “such fund or funds” is a reference to the “trust fund or trust funds” referred to in s 12(1) of the 1945 regulations;
- (b) for paragraph 60(b), admits the allegation therein but says that the reference in s 5(4) of the 1966 regulations to “such fund or funds” is a reference to the “trust fund or trust funds” referred to in s 12(1) of the 1945 regulations;-
- (c) does not admit the allegation in paragraph 60(c).

39A. As to paragraph 60A of the Defence:

- (a) the Applicant joins issue with the denial therein;
- (b) so far as concerns the Islander regulations, does not admit the allegation.

***Welfare funds***

40. As to paragraph 61 of the Defence, the Applicant:

- (a) denies the allegation in paragraph 61(a) because the word used in s 6 of 1945 regulations is “aboriginals” not “aboriginal”;
- (b) admits the allegation in paragraph 61(b);
- (c) denies the allegation in paragraph 61(c) because:
  - (i) s 12 of the 1939 Act operated so as to prescribe and circumscribe the powers of the Governor in Council to make regulations for the matters set out therein;
  - (ii) s 12(1) of the 1939 Act gave power to the Governor in Council to, *inter alia*, make regulations for the “contributions by aboriginals as may from time to time be prescribed” to the Welfare Fund;
  - (iii) of the reasons pleaded in paragraphs 260 to 261C and 261E of the 3ASOC.

41. As to paragraph 62 of the Defence, the Applicant:

- (a) denies that the word used in s 6 of the 1945 regulations was “aboriginal” because the word used was “aboriginals”;
- (b) subject to the matters pleaded in paragraphs 24 and 26(c) of this pleading, admits the balance of the allegations therein.

41A. As to paragraph 63 of the Defence, the Applicant:

- (a) admits subparagraph (a) except that in section 7 of the 1945 regulations “Protector” was not capitalised and no comma was placed after the word “mission”;
- (b) otherwise does not admit allegations because they are not within the knowledge of the Applicant;
- (c) says that the “Island Fund” was required to be established by the protector of Islanders pursuant to section 16 of the Islander Act;
- (d) says that the objects of the Island Fund and the fund that the protector was required to establish pursuant to section 7 the 1945 regulations were different;
- (e) says that section 7 of the 1945 regulations, which was made after the commencement of the Islander Act, made no reference to the Island Fund;
- (f) in the premises, contributions deducted from wages pursuant to section 7 of the 1945 regulations should not have been paid to the Island Fund.

42. As to paragraph 64 of the Defence, the Applicant:

- (a) denies that the word used in s 11 of the 1945 regulations was “aboriginal” because the word used “aboriginals”;
- (b) subject to the matters pleaded in paragraph 24 of this pleading, admits the balance of the allegations therein

43. As to paragraph 66 of the Defence, the Applicant admits the allegations therein.

44. ~~[Blank] As to paragraph 67 of the Defence, the Applicant admits the allegations therein.~~

#### **F. The Applicant’s employment history**

45. As to paragraph 68(a) of the Defence, the Applicant: ~~joins issue with the Respondent’s denial therein and repeats and relies on paragraph 68(a) of the ASOC.~~

(a) for paragraph 68(c), denies the allegation and says that all aboriginals who were employed were required to enter into a written agreement that complied with s 14(3) of the 1939 Act;

(b) for paragraph 68(d):

(i) admits that section 14(4) of the 1939 Act referred to a “permit to employ an aboriginal”;

(ii) says that in light of the other provisions of section 14 of the 1939 Act, the proper construction to be given to section 14(4) is that a permit to employ an aboriginal was granted to current or prospective employers of an aboriginal and that the written agreement between the employer and employed aboriginal was a separate document required to meet the requirements of section 14(3);

(iii) the permit to employ an aboriginal that was utilised by the Respondent did not meet the requirements of section 14(3) because it was not in the prescribed form of memorandum of agreement, being the form of agreement set out in Form 7 of the Schedule to the 1945 regulations and did not otherwise contain all of the information required by section 14(3).

(c) for paragraph 68(e):

(i) as to paragraph 68(e)(i), admits that the Respondent utilised at least one ‘permit’ to employ the Applicant but otherwise does not admit the allegations because the Respondent has been unable to produce more than one such permit in respect of the Applicant;

- (ii) otherwise does not admit the allegation in paragraph 68(e)(i) because it is not within the knowledge of the Applicant;
  - (iii) does not admit the allegation in paragraph 68(e)(ii) because it is not within the Applicant's knowledge;
  - (iv) denies the allegation in paragraph 68(e)(iii) and (iv) because any such permit was not in the form which section 14(3) of the 1939 Act mandated and repeats and relies on paragraph 68(b)(ii) of the 3ASOC;
- (d) for paragraph 68(f) joins issue with the denial therein;
- (e) for paragraph 68(h), denies the allegations therein because the Respondent is unable to produce any employment agreements for the Applicant which complied with section 14(3) of the 1939 Act and repeats and relies on subparagraphs (a) to (d) herein.

***Starcke Station (1)***

46. As to paragraph 69 of the Defence, the Applicant denies the allegations therein and repeats and relies on his recollection of his employment history as set out in the particulars to paragraph 69 of the 3ASOC and further says that the Respondent is not entitled to rely on paragraphs of this Reply which have, since the previous version of this Reply, been deleted.
- (a) ~~the Applicant does not admit that the Applicant was employed by Stareke Graziers and cannot further plead as to whether that was the precise name of the Applicant's employer until discovery has taken place;~~
  - (b) ~~admits that Stareke Graziers is listed in the Hopevale ledger cards for the Applicant as an employer of the Applicant.~~
47. As to paragraph 70 of the Defence, the Applicant denies the allegations therein and repeats and relies on paragraph 46 herein.
- (a) ~~the Applicant joins issue with the Respondent's denial therein and repeats and relies on paragraph 70 of the ASOC;~~
  - (b) ~~says that the Respondent's denial in paragraph 70 of the Defence contains no allegation of a material fact which operates to deny the allegation in paragraph 70 of the ASOC that the Applicant worked as a stockman.~~
48. As to paragraph 71 of the Defence, the Applicant repeats and relies on paragraph 71 of the 3ASOC does not admit the allegations therein because the knowledge of the matters

pleaded therein is not within the knowledge of the Applicant and the Applicant cannot plead further to the allegation until discovery takes place.

49. As to paragraph 72 of the Defence, the Applicant:
- (a) joins issue with the Respondent's denial;
  - (b) says that the Respondent has been unable to produce any employment agreement for the Applicant in the form required by section 14 of the 1939 Act ~~does not admit the allegation pleaded and repeats and relies on paragraph 72 of the ASOC.~~
50. [Blank] ~~The Applicant does not plead to paragraph 73 of the Defence because it is not an allegation of material fact.~~
51. [Blank] ~~As to paragraph 75(b) of the Defence, the Applicant repeats and relies on paragraph 49 of this pleading.~~
52. [Blank] ~~As to paragraph 76 of the Defence, the Applicant:~~
- ~~(a) — for paragraph 76(a):~~
    - ~~(i) — repeats and relies on paragraph 46 of this pleading;~~
    - ~~(ii) — admits that the relevant employment agreement number commenced with the numbers 275 and that the remaining numbers are indecipherable;~~
  - ~~(b) — for paragraph 76(d):~~
    - ~~(i) — says that under the employment agreement the gross wage was to be £4 per week with 10 shillings per week as pocket money;~~
    - ~~(ii) — says that the balance of £3/10/- was to be paid to the Hopevale superintendent;~~
    - ~~(iii) — otherwise does not admit the allegation and cannot plead further until discovery has taken place;~~
  - ~~(c) — for paragraph 76(f), denies the allegation therein because by Queensland Government Gazette number 145 of 12 April 1952, regulation 74(1) of the 1945 regulations was repealed and replaced with the following: "Every employer shall pay all expenses of the employee's conveyance from the place of residence to the place of employment, and on completion of the period of agreement the cost of his return to his place of residence, together with an allowance for assistance at the rate of 12s. per day while *en route*. The allowance for assisting *en route* shall not apply to any employee travelling by steamer when board is provided for by the passage money."~~

~~(d) for paragraph 76(g):~~

- ~~(i) joins issue with the Respondent's denial as to the period of employment and repeats and relies on paragraph 76(g) of the ASOC;~~
- ~~(ii) does not admit that the employer was Stareke Graziers for the reasons pleaded in paragraph 46 above;~~
- ~~(iii) admits that the Applicant's employment stated in the ledger card for the stated 26 day period from 1 October 1954 was pursuant to agreement number 20245;~~
- ~~(iv) repeats and relies on paragraph 52(b) of this pleading;~~
- ~~(v) repeats and relies on paragraph 76(g) of the ASOC.~~

52A. As to paragraph 77 of the Defence, the Applicant (assuming that the reference to "The Applicant" in the introductory words to paragraph 77 should instead be "The Respondent"):

(a) joins issue with the Respondent's denials therein;

(b) for paragraph 77(a):

- (i) says that he was provided with very basic rations such as flour and tea but no vegetables or meat were provided;
- (ii) says that he had to grow his own vegetables and hunt for any meat;
- (iii) says that he was not provided with any dental services whatsoever;
- (iv) says that there was no doctor at the Hopevale mission, only a nursing sister who had rudimentary training;
- (v) says that his home at Hopevale mission in which he grew up was built by his father, who was assisted by Rory Dick, using timber from trees around the mission;
- (vi) says that some clothing could be purchased, but that the Applicant had no money to purchase any clothes, and instead obtained clothes from amongst second hand clothing given to the mission by a Lutheran charity;
- (vii) otherwise denies the allegations;

(c) for paragraph 77(c), says that section 28(1) of the 1945 regulations contains no reference to an aboriginal "being supported by the superintendent" as a precondition to the use of the power set out in that section.

53. As to paragraph 78 of the Defence, the Applicant: cannot further plead to the allegation until particulars are provided by the Respondent of the following words appearing in section 78 of the Defence: “...the arrangements between the parties under the 1939 Act in respect of such work by a person residing at Hopevale do not evince an intention to enter into legal relations under a contract of employment.”

(a) — as to paragraph 78(a):

(i) — says that by s 14(5) of the 1939 Act, the default position was that the wages payable to an aboriginal employed under the 1939 Act were to be not less than prescribed and that that default position was different only where “otherwise approved by the Director”;

(ii) — says that the Director would have been unlikely to approve the wages of individual aborigines but cannot give further particulars until discovery has taken place;

(iii) says that the 1945 regulations contained detailed provisions and forms concerning aboriginal wages, including rates of pay and forms;

(iv) says that the Respondent in its pleading at paragraph 78 of the Defence has ignored the effect of the particulars provided to paragraph 78(a) of the ASOC;

(b) — admits paragraph 78(b);

(c) — as to paragraph 78(c) of the Defence:

(i) — says that paragraph 78 of the ASOC commences with the words “Further as a matter of practice” and as such the allegations therein are concerned with the prevailing practice;

(ii) further says that the Respondent’s pleading in paragraph 78 of the Defence ignores the effect of the particulars given for paragraph 78(b) of the ASOC, such particulars including words of the responsible Minister spoken to Parliament;

54. — As to paragraph 83 of the Defence, the Applicant joins issue with the Respondent’s denial therein and repeats and relies on paragraph 52(d) of this pleading.

55. — As to paragraph 84 of the Defence, the Applicant:

(a) — joins issue with the Respondent’s denial in paragraph 84(a) and repeats and relies on paragraph 76(g) of the ASOC;

- ~~(b) — for paragraph 84(b), repeats and relies on paragraph 76(i) of the ASOC;~~
- ~~(c) — for paragraph 84(c), admits that the ledger card numbered 391937 contains the remark “paid” against the employment agreement numbered 20245 but otherwise does not admit the allegation because it is not within the Applicant’s knowledge;~~
- ~~(d) — for paragraph 84(d):~~
- ~~(i) admits that the savings bank ledger card numbered 391937 appears to show that:~~
- ~~1. an amount not wholly legible but which appears to be approximately £21 or £23 was deposited on 30 September 1954;~~
- ~~2. an amount of £45/10/ was deposited on a date which is not wholly legible but which appears to be 30 November 1954;~~
- ~~3. an amount of £15/3/4 was deposited on a date which appears to be 31 March 1955;~~
- ~~(ii) otherwise does not admit the allegations because there is no indication in the savings bank ledger card as to what the deposits are in respect of.~~

~~56. — As to paragraph 86 of the Defence, the Applicant denies that the amounts due to the Applicant in respect of each period of employment in 1954 are recorded on the Applicants ledger card as having been paid and repeats and relies on paragraph 76(g) of the ASOC and paragraph 55(d) of this pleading.~~

***Laura Station***

~~57. — The Applicant joins issue with the Respondent’s denials contained in paragraphs 87 to 101 of the Defence and repeats and relies on paragraphs 87 to 101 of the ASOC.~~

***Kings Plains Station***

~~58. — the Applicant joins issue with the Respondent’s denials contained in paragraphs 102 to 116 of the Defence and repeats and relies on paragraphs 102 to 116 of the ASOC.~~

***Stareke Station (2)***

~~59. As to paragraph 117 of the Defence, the Applicant:~~

~~(a) does not admit that the Applicant was employed by Stareke Graziers and cannot further plead as to whether that was the precise name of the Applicant's employer until discovery takes place, but says the Applicant worked at Stareke Station as pleaded at paragraph 117 of the ASOC;~~

~~(b) otherwise joins issue with the respondent's denial therein and repeats and relies on paragraph 117 of the ASOC;~~

~~60. As to paragraph 118 of the Defence, the Applicant does not admit the allegation therein because the knowledge of the matters pleaded therein is not within the knowledge of the Applicant and the Applicant cannot plead further to the allegations until discovery takes place.~~

~~61. As to paragraph 119 of the Defence, the Applicant:~~

~~(a) denies the allegation in paragraph 119(a) because not all of the agreement numbers in the Hopevale ledger cards commence with the letter "P";~~

~~(b) does not admit the allegation in paragraph 119(b) as the allegation is not within the knowledge of the Applicant and furthermore, the Applicant cannot further plead without particulars of the allegation being provided.~~

~~62. As to paragraph 120 of the Defence, the Applicant:~~

~~(a) for paragraph 120(a), does not admit the allegation that the Applicant was employed by Stareke Graziers and cannot plead further to the allegations until discovery has taken place;~~

~~(b) for paragraph 120(d):~~

~~(i) says that under the employment agreement the gross wage was to be £7 per week with £1 per week as pocket money;~~

~~(ii) says that the balance of £6 per week was to be paid to the Hopevale superintendent;~~

~~(iii) otherwise does not admit the allegation and cannot plead further until discovery has taken place;~~

~~(c) for paragraph 120(f), denies the allegation therein because by Queensland Government Gazette number 145 of 12 April 1952, regulation 74(1) of the 1945 regulations was repealed and replaced with the following: "Every employer shall pay all expenses of the employee's conveyance from the place of residence to the~~

place of employment, and on completion of the period of agreement the cost of his return to his place of residence, together with an allowance for assistance at the rate of 12s. per day while *en route*. The allowance for assisting *en route* shall not apply to any employee travelling by steamer when board is provided for by the passage money.”;

(d) — ~~for paragraph 120(g) joins issue with the Respondent’s denial therein and repeats and relies on paragraphs 120(g) and 120(j) of the ASOC, ;~~

(e) — ~~for paragraph 120(h), the Applicant joins issue with the Respondent’s denial therein and repeats and relies on paragraph 47 of this pleading;~~

(f) — ~~for paragraph 120(i), admits that not all of the Applicant’s wages were to be paid to the superintendent because the Applicant was to be paid £ 1 pocket money per week as pleaded at paragraph 120(j) of the ASOC.~~

63. — ~~As to paragraph 127 of the Defence, the Applicant joins issue with the respondent’s denial therein and repeats and relies on paragraph 127 of the ASOC and paragraph 62 of this pleading.~~

64. — As to paragraph 128 of the Defence, the Applicant:

(a) — ~~joins issue with the Respondent’s denial therein and repeats and relies on paragraph 128 of this pleading;~~

(b) — ~~for paragraph 128(a), says that:~~

(i) — ~~the savings bank ledger card for the Applicant for the Hopevale Protectorate in respect of the years 1955 and 1956, being documents numbered 391937 and 391938 respectively, disclose the following employment agreements:~~

1. — ~~Stareke Graziers under employment agreement 275 [indecipherable];~~

2. — ~~Stareke Graziers under employment agreement 20245;~~

3. — ~~Mr Len Elmes under employment agreement P20299;~~

4. — ~~Stareke Graziers under employment agreement P21074;~~

5. — ~~Stareke Graziers under employment agreement P21081;~~

6. — ~~Stareke Graziers under employment agreement P21082;~~

7. — ~~Stareke Graziers under employment agreement numbers P21027 and 21025;~~

- ~~(ii) — the Respondent advances no basis for implicitly asserting that a permit for casual employment did not fall to be regulated as, or was not required to take the form of, an employment agreement under the 1939 Act and regulations;~~
- ~~(e) — does not admit the allegation in paragraph 128(b) because it is not within the Applicant's knowledge and the Applicant cannot plead further until discovery takes place;~~
- ~~(d) — denies the allegations in paragraph 128(c) because the period of employment was not 9 days but 92 days according to the savings bank ledger card document numbered 391937;~~
- ~~(e) — denies the allegations in paragraph 128(d) because the period of employment was from 21 May 1956 and not from 21 February 1956;~~
- ~~(f) — does not admit the allegation in paragraph 128(e) because the remarks contained in the ledger card stated "paid" but that does not entail the factual conclusion that the wages were so paid and the Applicant cannot plead further until discovery has taken place;~~
- ~~(g) — for paragraph 128(f):
  - ~~(i) — in respect of 128(f)(i), says that the savings bank ledger card numbered 391937 records a notation "W2[unclear, but which appears to be a 5 or an 8]/12 to 31/12/55" and against that notation in the deposit column appears £4/-;~~
  - ~~(ii) — otherwise denies the allegation because the Applicant maintains that the work period actually commenced on 25 December 1955;~~
  - ~~(iii) in respect of paragraph 128(f)(ii):
    - ~~1. — admits that the savings bank ledger card numbered 391937 records a notation "W 2/1 to 31/[unclear — it may be a 3 or 5]/56" and against that notation in the deposit column appears £44/10/;~~
    - ~~2. — otherwise denies the allegation on the basis that 44 days of work (being the combined total of the 9 and 35 day work periods referred to by the Respondent) at the rate of £6 per week payable to the protector does not equate to £44/10/;~~~~
  - ~~(iv) in respect of 128(f)(iii):~~~~

~~1. admits that the savings bank ledger card numbered 391937 records a notation for 31 October 1956 of “W 2/4 to” what appears to be “23/5/56” and against which is recorded £45/-;~~

~~2. otherwise denies the allegations on the basis that 45 days of work at the rate of £6 per week payable to the protector does not generate the figure of £45.~~

~~65. As to paragraph 129(c) of the Defence, the Applicant joins issue with the Respondent’s denial therein and repeats and relies on paragraph 129 of the ASOC and paragraph 64 of this pleading.~~

~~66. As to paragraph 130(a) of the Defence, the Applicant admits that the ledger cards for 1955 and 1956 contain the remark “paid” against each of the employments listed therein but otherwise does not admit the allegation because of the matters set out in paragraphs 59 to 65 of this pleading.~~

### ~~1957~~

~~67. As to paragraph 131 of the Defence, the Applicant:~~

~~(a) joins issue with the Respondent’s denials therein and repeats and relies on paragraph 131 of the ASOC;~~

~~(b) for paragraph 131(d):~~

~~(i) repeats and relies on particular (C) to paragraph 138 of the ASOC;~~

~~(ii) repeats and relies on paragraph 131 of the ASOC.~~

~~68. As to paragraph 132 of the Defence, the Applicant:~~

~~(a) joins issue with the Respondent’s denials therein and repeats and relies on paragraph 1320 to the ASOC;~~

~~(b) does not admit the allegation in paragraph 132(d) because it is not within the knowledge of the Applicant.~~

~~69. As to paragraph 133 of the Defence, the Applicant:~~

~~(a) joins issue with the Respondent’s denials therein and repeats and relies on paragraph 133 the ASOC;~~

~~(b) for paragraph 133(d):~~

~~(i) admits paragraph 133(d)(i);~~

~~(ii) does not admit paragraph 133(d)(ii) as it is not within the Applicant's knowledge;~~

~~(iii) in respect of 133(d)(iii), repeats and relies on particular (C) to paragraph 138 of the ASOC.~~

~~70. As to paragraph 134 of the Defence, the Applicant joins issue with the denials therein and says as follows in respects of the sub-paragraphs to paragraph 134 of the Defence:~~

~~(a) for paragraph 134(a), the Applicant repeats and relies on particular (C) to paragraph 138 of the ASOC;~~

~~(b) admits the allegations in paragraph 134(d), (f), (g), (h), (j), (k), (m), and (n);~~

~~(c) for paragraphs 134(i), (l) and (o), admits that the relevant ledger card provided that the gross wage was £5 per week, with £1 per week as pocket money, but says the balance after pocket money was payable to the protector or superintendent;~~

~~(d) for paragraph 134(p), says that the matters pleaded in paragraph 70 of the Defence relate to the work descriptions set out in Form 8 of the 1945 regulations and is an issue separate from the work that the Applicant actually performed;~~

~~(e) for paragraph 134(q), in respect of his employment at Laura Station, the Applicant pleads in paragraph 134(i) of the ASOC that pocket money was payable;~~

~~(f) for paragraph 134(r), the Applicant joins issue with the Respondent's denial therein and repeats and relies on paragraph 134(j) of the ASOC;~~

~~71. As to paragraph 135 of the Defence, the Applicant joins issue with the Respondent's denials therein and repeats and relies on paragraph 135 of the ASOC and paragraph 70 of this pleading.~~

~~72. As to paragraph 136 of the Defence, the Applicant joins issue with the Respondent's denials therein and repeats and relies on paragraph 136 of the ASOC.~~

~~73. As to paragraph 137 of the Defence, the Applicant joins issue with the Respondent's denials therein and repeats and relies on paragraph 137 of the ASOC and paragraph 69(b) of this pleading.~~

~~74. As to paragraph 140 of the Defence, the Applicant joins issue with the Respondent's denials therein and repeats and relies on paragraph 140 of the ASOC.~~

~~75. As to paragraph 141 of the Defence,;~~

~~(a) — the Applicant joins issue with the Respondent’s denials therein and repeats and relies on paragraph 141 of the ASOC;~~

~~(b) — for paragraph 141(d) of the Defence, repeats and relies on particular (B) to paragraph 87 of the ASOC and particular (C) to paragraph 138 of the ASOC.~~

~~76. — As to paragraph 143 of the Defence, the Applicant:~~

~~(a) — for paragraph 143(a), joins issue with the Respondent’s denials therein and repeats and relies on paragraph 143 of the ASOC;~~

~~(b) — for paragraph 143(b), repeats and relies on particular (B) to paragraph 87 of the ASOC and particular (C) to paragraph 138 of the ASOC and further:~~

~~(i) in respect of paragraph 143(b)(i), admits that ledger card number 391938 contains the remark “paid” in respect of employment of the Applicant by Mossman Butchering Co. commencing 4 April 1957 for a period of 23 days but otherwise does not admit the allegation because of paragraph (ii)(2) below;~~

~~(ii) in respect of paragraph 143(b)(ii):~~

~~1. — admits the allegation therein;~~

~~2. — says that the period from 4 April to 30 April recorded in mission receipt number 91235 is a greater period of time than that recorded in the ledger card (23 days) and, if the mission receipt is accurate in content, then the ledger card is inaccurate;~~

~~(iii) in respect of paragraph 143(b)(iii), admits that ledger card number 391938 contains the remark “paid” in respect of the employment by the Applicant by Mossman Butchering Co. commencing 1 May 1957 for a period of 27 days but otherwise does not admit the allegation because there are multiple amounts to which the remark “paid” could apply;~~

~~(iv) admits the allegation in paragraph 143(b)(iv);~~

~~(v) does not admit the allegation in paragraph 143(b)(v) because the ledger card merely states “paid” without indicating which amount if any was paid;~~

~~(vi) denies the allegation in paragraph 143(b)(vi) because the receipt mentioned therein records payment for the period 1 June 1957 to 26 June 1957;~~

~~(vii) denies that the amounts pleaded in paragraph 143(b)(vii) are recorded as banked in respect of the Applicant’s employment with Mossman~~

Butchering Company because those entries do not refer to the Mossman Butchering Company;

~~(viii) does not admit the allegation in paragraph 143(b)(viii) because the allegation contains no subject.~~

***Stareke Station (3)***

~~77. As to paragraph 144 of the Defence, the Applicant:~~

~~(a) does not admit that the Applicant's employer was Stareke Graziers because the specific name of the Applicant's employer is not within the Applicant's knowledge and repeats and relies on paragraph 144 of the ASOC;~~

~~(b) admits that the permit for casual employment number 22439 provides that the nature of the employment was to be "stock work" and further says that "stock work" was the work done by a stockman;~~

~~78. As to paragraph 145 of the Defence, the Applicant:~~

~~(a) admits that Pastor Kernich signed the Permit for Casual Employment No. 22439 dated 27 February 1957;~~

~~(b) otherwise joins issue with the Respondent's denial and repeats and relies on paragraph 145 of the ASOC.~~

~~79. As to paragraph 146 of the Defence, the Applicant:~~

~~(a) for paragraph 146(a):~~

~~(i) admits that Pastor Kernich signed the Permit for Casual Employment No. 22439 dated 27 February 1957~~

~~(ii) otherwise does not admit the allegation;~~

~~(b) does not admit the allegation in paragraph 146(b) because the wording on the ledger cards is not clear;~~

~~(c) for paragraph 146(c):~~

~~(i) admits that some of the Hopevale ledger cards refer to agreement numbers commencing with the letter "P";~~

~~(ii) otherwise denies the allegation because not all of the agreement numbers in the Hopevale ledger cards commence with the letter "P";~~

~~(d) — the Applicant does not admit the allegation in paragraph 146(d) because it is not within the Applicant’s knowledge;~~

80. — As to paragraph 147 of the Defence, the Applicant:

~~(a) — does not admit the allegation in paragraph 147(a) because of the matters pleaded in paragraph 77(a) of this pleading;~~

~~(b) — admits the allegations in paragraph 147(d) but only in respect of the 7 day employment period commencing 24 December 1957 and otherwise denies the allegation and repeats and relies on paragraph 147(d) of the ASOC;~~

~~(c) — admits the allegation in paragraph 147(f);~~

~~(d) — for paragraph 147(g), joins issue with the Respondent’s denials therein and repeats and relies on paragraph 147(g) of the ASOC and says further:~~

~~(i) — admits that the period of employment specified in the permit for casual employment numbered 22439 was for 7 days from 24 December 1957;~~

~~(ii) — admits that the ledger card numbered 391938 specifies that Stareke Graziers was, or was to be, the employer of the Applicant under agreement number P22535 for a period of 14 days from 27 December 1957 and that the gross wages for that employment was, or was to be, £8/10/ per week with £1 per week as pocket money with the balance paid, or to be paid, to the protector;~~

~~(iii) — says that there is an evident overlap between the employment agreement numbered P22437 commencing 24 December 1957 for 7 days and the employment agreement numbered P22535 commencing 27 December 1957 for 14 days and that the Respondent does not deal with this overlap in the Defence;~~

~~(iv) — admits paragraphs 147(g)(iv), (v) and (vi) save that, for (g)(vi), the “credit” was the amount to be paid to the protector.~~

81. — As to paragraph 148 of the Defence, the Applicant:

~~(a) — for paragraph 148(a):~~

~~(i) — denies the allegations therein because the 1939 Act and the 1945 regulations applied to any employment of an aborigine who fell within the 1939 Act notwithstanding that the employment was described as being casual employment;~~

~~(ii) says that the Respondent does not plead any statutory basis as to why the employment agreement in the form of the permit failed to comply with the requirements of the 1939 Act and regulations;~~

~~(b) — for paragraph 148(b), repeats and relies on paragraph 148 of the ASOC and paragraph 79 of this pleading.~~

~~82. — As to paragraph 149 of the Defence, the Applicant joins issue with the Respondent's denial therein and repeats and relies on paragraph 149 of the ASOC.~~

~~83. — As to paragraph 150 of the Defence, the Applicant does not admit the allegation because in the absence of further particulars from the Respondent the Applicant cannot be sure as to the terms, length and number of pages of the permit.~~

~~84. — As to paragraph 155 of the Defence, the Applicant joins issue with the Respondent's denial therein and repeats and relies upon paragraph 155 of the ASOC and paragraph 80(d) of this pleading.~~

~~85. — As to paragraph 156 of the Defence, the Applicant:~~

~~(a) — for paragraph 156(a):~~

~~(i) admits that the ledger card numbered 391938 contains a remark that the amounts in the column headed "Rate of Wages" for employment with Stareke Graziers during the period of 7 days commencing on 24 December 1957 were "paid";~~

~~(ii) admits the ledger card numbered 391938 records the sum of £7 deposited in the month of May 1957 in respect of "W 24/12 — 31.12.57";~~

~~(iii) otherwise does not admit the allegation as it is not within the Applicant's knowledge;~~

~~(b) — admits the allegation in paragraph 156(b);~~

~~(c) — denies the allegation in paragraph 156(c) because the ledger card numbered 391938 for 1956, 1957 and 1958 records that wages paid or to be paid to the Applicant from Stareke Graziers under agreement number P22535 to employ the Applicant for 14 days from 27 December were paid;~~

~~(d) — admits the allegation in paragraph 156(d);~~

~~(e) — denies the allegation in paragraph 156(e) because the ledger card numbered 391938 for 1956, 1957 and 1958 records that wages paid or to be paid to the Applicant from~~

~~Starcke Graziers under agreement number P22537 to employ the Applicant for 6 days from 22 March 1958 were paid;~~

~~(f) — admits the allegation in paragraph 156(f);~~

~~(g) — for paragraph 156(g):~~

~~(i) — denies the allegation therein because the aggregate of the sums mentioned therein total £31/10/ and not £22/ / as pleaded by the Respondent;~~

~~(ii) — says that the ledger card numbered 391938 records the following as having been deposited:~~

~~1. — £7/ / on 31 May 1958 in respect of “W 24/12 — 31/12/57”;~~

~~2. — £17/10/ on 31 July 1958 in respect of “W 27/12/57 — 11/1/58”;~~

~~3. — £7/10/ on 31 July 1958 in respect of “W 31/1 — 28/3/58”;~~

~~(iii) — says that there is an unexplained overlap between the wages referred to in (g)(ii)(1) and (2) above.~~

### ***Laura Station***

~~86. — As to paragraph 158A of the Defence, the Applicant:~~

~~(a) — joins issue with the denial therein and repeats and relies on paragraph 158A of the ASOC;~~

~~(b) — other than that the ledger card numbered 391939 recorded that the employer under agreement number P22483 was “Mossman Bute Co.”, admits the allegation in paragraph 158A(a);~~

~~(c) — other than that the ledger card numbered 391939 records that the employer under agreement number P22484 was “Mossman Bute Co.”, admits the allegation in paragraph 158A(b);~~

~~(d) — other than that the ledger card numbered 391939 recorded that the employer under agreement number P22485 was “Mossman Bute Co.”, admits the allegation in paragraph 158A(c);~~

~~87. — As to paragraph 158B of the Defence, the Applicant:~~

~~(a) — for paragraph 158B(a):~~

~~(i) does not admit the allegation therein as it is not within the knowledge of the Applicant;~~

~~(ii) repeats and relies on paragraph 158B of the ASOC;~~

~~(b) for paragraph 158B(b)(ii):~~

~~(i) does not admit the allegation in paragraph 158B(b)(ii)(1) because not all of the agreements numbers start with "P";~~

~~(ii) does not admit paragraph 158B(b)(ii)(2) because it is not within the Applicant's knowledge;~~

~~(c) for paragraph 158B(c):~~

~~(i) admits the allegation in paragraph 158(c)(v);~~

~~(ii) in respect of paragraph 158B(c)(vi), says that the work of a stockman is stock work.~~

~~88. As to paragraph 158B(e) of the Defence, the Applicant repeats and relies on paragraph 158C(d) of the ASOC.~~

~~89. As to paragraph 158F of the Defence, the Applicant:~~

~~(a) admits the allegations in paragraphs 158F(a), (b), (c), (d) and (e);~~

~~(b) denies the allegation in paragraph 158F(f) because Hopevale Mission receipt number 91290 dated 5 November 1958 records of payment of £22/10/- in respect of the Applicant for the period from 1 August 1958 to 21 August 1958;~~

~~(c) for paragraph 158F(g):~~

~~(i) admits that ledger card number 391939 records an amount of £6/5/- deposited on 31 December 1958 in respect of "W 25/6 — 30/6/58";~~

~~(ii) admits that the ledger card number 391939 records an amount of £33/15/- deposited on 31 December 1958 in respect of "W 1/7 — 31/7/58";~~

~~(iii) denies the allegation in paragraph 158F(g)(iii) because ledger card number 391939 records an amount of £22/10/- deposited on 31 December 1958 in respect of "W 1/8 — 21/8/58";~~

~~(iv) admits that the sum of the figures in (i) to (iii) above is £62/10/-.~~

*Palm Island*

89A. As to paragraph 159 of the Defence, the Applicant repeats and relies on paragraph 11(ab) herein.

89B. As to paragraph 163 of the Defence, the Applicant repeats and relies on paragraph 11(ab) herein.

90. As to paragraph 164 of the Defence the Applicant:

- (a) does not admits the allegations in paragraphs 164(b) (a) and (c);
- (b) for paragraph 164(d), repeats and relies on paragraph 53 herein ~~does not admit the allegation in paragraph 164(e).~~

91. As to paragraph 165 of the Defence, the Applicant admits that the Application for Permission to Marry dated 22 July 1960 lists the Applicant's wage as £1 per fortnight.

92. As to paragraph 166 of the Defence, the Applicant:

- (a) does not admit the allegation in paragraph 166(a) as the Applicant's taxation record card for 1959-1960 is unclear;
- (b) says that the Application for Permission to Marry was dated 22 July 1960 but otherwise admits the allegation in paragraph 166(b);
- (c) says that the Application for Permission to Marry was dated 22 July 1960 but otherwise admits the allegation in paragraph 166(c);
- (d) denies the allegation in paragraph 166(d) because:
  - (i) the Applicant was not recorded as a "visiting native" but says the Applicant's name did appear in a list from "Reconciliation Visiting Natives" for Palm Island;
  - (ii) the Applicant appeared in the list referred to in (i) on the following dates: 31 December 1959, 31 January 1960, 29 February 1960, 30 April 1960 and 30 May 1960.

***Dunraven Station***

~~93. As to paragraph 167 of the Defence, the Applicant:~~

- ~~(a) for paragraph 167(a):~~
  - ~~(i) admits that a name which appears to be, or be similar to, NV & AR Rose is listed on the Applicant's taxation record for what appears to be the 1959-1960 taxation year;~~

(ii) admits that that £65 is listed in the “Employers” column of the table but not in the gross earnings column;

(iii) denies that NV and AR Rose paid “gross earnings” because that is not the correct characterisation to be given to any payments that may have been made by NV and AR Rose;

(iv) says that the Applicant’s taxation record for what appears to be the 1959—1960 taxation year also records a deduction of (what appears to be) pocket money of £3 in respect of the employment by NV and AR Rose;

(b) — does not admit the allegation in paragraph 167(b) because it is not within the Applicant’s knowledge;

***Rokeby Station (2)***

94. — As to paragraph 181 of the Defence, the Applicant does not admit the allegation because it — is not within the Applicant’s knowledge.

95. — As to paragraph 184 of the Defence, the Applicant does not admit the allegation because it is not within the Applicant’s knowledge.

96. — As to paragraph 185 of the Defence, the Applicant repeats and relies on paragraph 185 of the ASOC.

97. — As to paragraph 186 of the Defence, the Applicant:

(a) — does not admit the allegation in paragraph 186(a) because it is not within the Applicant’s knowledge;

(b) — admits the allegation in paragraph 186(d);

(c) — admits the allegation in paragraph 186(f);

(d) — for paragraph 186 (g), joins issue with the Respondent’s denial therein and repeats and relies on paragraph 186(g) of the ASOC.

98. — As to paragraph 194 of the Defence, the Applicant:

(a) — joins issue with the Respondent’s denial in paragraph 194(a) and repeats and relies on paragraph 194 of the ASOC;

(b) — does not admit the allegation in paragraph 194(b) because it is not within the

(c) — admits the allegation in paragraph 194(c);

~~(d) — for paragraph 194(d):~~

~~(i) — does not admit that on or about 9 July 1962 the sum of £68/ / was paid by the Rokeby Cattle Co. Coen because it is not within the Applicant's knowledge;~~

~~(ii) — says that the sum paid referred to in (i) was stated to be in respect of the Applicant for the period 1 October 1961 to 18 December 1961;~~

~~(iii) says that there is a gap between the date the Applicant commenced employment on 5 September 1961 (as pleaded at paragraph 181 of the Defence) and the period in respect of which the sum of £68/ / was paid which is unaccounted for.~~

### ***Kalinga Station***

~~99. — As to paragraph 195 of the Defence, the Applicant admits that on 16 February 1962 he was working on Kalinga Station.~~

### ***Droving***

~~100. — As to paragraph 207 of the Defence, the Applicant repeats and relies on paragraph 207 of the ASOC.~~

~~101. — As to paragraph 208 of the Defence, the Applicant repeats and relies on paragraph 208 of the ASOC and the preceding paragraph of this pleading.~~

~~102. — As to paragraph 209 of the Defence, the Applicant:~~

~~(a) — for paragraph 209(a) and 209(c), refers to and repeats the matters set out in paragraph 111 of this pleading;~~

~~(b) — for paragraph 209(b), accepts the deemed admission made therein;~~

~~(c) — for paragraph 209(d), denies the allegations therein and repeat and relies on paragraph 209(e) of the ASOC.~~

~~103. — As to paragraphs 210 and 211 of the Defence, the Applicant refers to and repeats the matters set out in paragraphs 100, 101 and 102 of this pleading.~~

~~104. — As to paragraph 212 of the Defence, the Applicant:~~

~~(a) — for paragraph 212(a), accepts the deemed admission contained therein;~~

- (b) — for paragraph 212(b), refers to and repeats paragraph 102(d) of this pleading.
105. — As to paragraph 213 of the Defence, the Applicant joins issue with the Respondent's denial therein and refers to and repeats paragraph 213 of the ASOC and paragraph 104 of this pleading.
106. — As to paragraph 214 of the Defence, the Applicant:
- (a) — for paragraph 214(a), refers to and relies upon paragraph 111 of this pleading;
  - (b) — for paragraph 214(b), does not admit the allegation that the periods of employment set out in paragraph 225A of the Defence were permitted by the then superintendent at either Hopevale or Palm Island;
  - (c) — for paragraph 214(c), refers to and repeats the matters pleaded in paragraph 100 of this pleading.
107. — As to paragraph 215 of the Defence, the Applicant:
- (a) — for paragraph 215(a), refers to and repeats the matters pleaded in paragraphs 111(a), (d) and (e) of this pleading;
  - (b) — for paragraph 215(d), refers to and repeats the matters pleaded in paragraph 111(a), (b), (c) and (h) of this pleading;
  - (c) — for paragraph 215(e), refers to and repeats the matters pleaded in paragraph 111(a) — (f) of this pleading;
  - (d) — for paragraph 215(f), refers to and repeats the matters pleaded in paragraph 111(g) of this pleading.
108. — As to paragraph 216 of the Defence, the Applicant:
- (a) — for paragraph 216(a), admits that the Hope Vale ledger cards refer to some agreement numbers which start with "P" but says that not all agreement numbers start with that letter and otherwise does not admit the allegation;
  - (b) — for paragraph 216(b), does not admit the allegations therein because it is outside the Applicant's knowledge;
  - (c) — says that there is no statutory basis for any type of employment permit which does not comply with the terms of the 1939 Act and regulations and the Respondent does not plead any such basis.
109. — As to paragraph 217 of the Defence, the Applicant joins issue with the Respondent's denials therein and:

~~(a) — refers to and repeats paragraph 217 of the ASOC;~~

~~(b) — refers to and relies upon the matters pleaded in paragraph 111 of this pleading.~~

~~110. — As to paragraph 218 of the Defence, the Applicant:~~

~~(a) — refers to and repeats paragraph 108 of this pleading;~~

~~(b) — refers to and repeats paragraph 218 of the ASOC.~~

~~111. — As to paragraph 225A of the Defence, the Applicant:~~

~~(a) — for paragraph 225A(a):~~

~~(i) — admits the allegations in paragraph 225A(a)(i);~~

~~(ii) — denies the allegations in paragraph 225A(a)(iii) because not all of the wages payable in respect of the employment were recorded on the ledger card numbered 391937 as having been paid;~~

~~(iii) in respect of 225A(a)(iv):~~

~~1. — admits that ledger card number 391937 records a payment dated on or about 31 October 1955 in respect of the particulars “W 2[unclear]/6/55 to 18/18/55” for which a deposit of £35/ — is noted;~~

~~2. — says that the period from 28 June 1955 to 15 August 1955 is a period of 49 days and not a period of 42 days;~~

~~3. — says that consequently the total amount of wages payable to the Applicant were not paid for performing the work referred to therein and that the ledger card incorrectly records wages as having been paid in circumstances when they had not been so paid;~~

~~(b) — for paragraph 225A(b):~~

~~(i) in respect of paragraph 225A(b)(i):~~

~~1. — admits that ledger card number 391936 records Mr Wallace as being the employer of the Applicant pursuant to agreement number P225214 for a period of 17 days commencing on 31 January 1958 (that is, until 16 February 1958);~~

~~2. — admits that Hopevale receipt number 91271 records the Applicant having worked for Mr Wallace during the period 13 January 1958 to 31 January 1958;~~

~~3. otherwise does not admit the allegation because there is a discrepancy between the ledger card and the above mentioned receipt number 91271;~~

~~(ii) for paragraph 225A(b)(ii), admits that the ledger card numbered 391936 listed the wages specified in that paragraph;~~

~~(iii) for paragraph 225A(b)(iii), does not admit that Mr Wallace paid the wages payable to the superintendent in paragraph 225A(b)(i) because:~~

~~1. the Hopevale receipt numbered 91271 records wages being received for a different period of time;~~

~~2. the Hopevale ledger card numbered 391938 records a deposit on or about 31 July 1958 in respect of "W 31/1—28/2/58" in the sum of £51/5/-;~~

~~3. there is an evident overlap between the employment agreements listed in the ledger card number 391936 and the ledger card has been incorrectly completed in one or more respects;~~

~~(iv) for paragraph 225A(b)(iv):~~

~~1. admits that Hopevale ledger card number 391936 records Mr Wallace as being the employer of the Applicant under agreement number P22522 from 1 February 1958 for a period of 24 days;~~

~~2. says that the 24 day period from 1 February 1958 was up to and including 24 February 1958;~~

~~3. admits that the Hopevale receipt number 91272 dated 30 June 1958 records the receipt of money from Mr Wallace on account of the Applicant having worked from the period 1 February 1958 to 28 February 1958;~~

~~4. says that there is a discrepancy between the period of the employment as set out in the ledger card and the period of time set out in the receipt for payment;~~

~~(v) in respect of paragraph 225A(b)(v):~~

~~1. admits that ledger card number 391936 records the wages payable to the Applicant as being £8/10/- gross with pocket money of £1 per week payable to the Applicant and £7/10/- payable superintendent;~~

~~2. otherwise does not admit the allegation because in so far as the two employment agreements referred to in ledger card 391936 overlap as to the period of time worked, it is unclear what “that agreement” is a reference to as pleaded by the Respondent;~~

~~(vi) the Applicant cannot plead to the allegation in paragraph 225A(b)(vi) because it is unclear whether the words “that employment” is a reference to the employment period referred to in the ledger card or the employment period specified in the receipt, those employment periods being different;~~

~~(vii) in respect paragraph 225A(b)(vii):~~

~~1. admits that the Hopevale ledger card numbered 391938 records a deposit on or about 31 July 1958 in respect of “W 31/1—28/2/58” in the sum of £51/5/-;~~

~~2. admits that the amounts recorded in respect of the Applicant as having been received from Mr Wallace in receipt numbers 91271 and 91272 total sum of £51/5/-;~~

~~3. otherwise does not admit the allegations because there is a clear discrepancy between the periods of work in ledger card number 391936 and the periods of employment in respect of the Applicant set out in Hopevale receipts number 91271 and 91272;~~

~~4. further says that if the aforementioned Hopevale receipts are accurate then the ledger card number 391936 is inaccurate;~~

~~(e) for paragraph 225A(e):~~

~~(i) says that the 24 day period commencing on 30 January 1959 expired on 22 February 1959;~~

~~(ii) in respect of paragraph 225A(c)(ii), admits that the ledger card names Mr Wallace as the employer but otherwise does not admit the allegation pending the completion of discovery;~~

~~(iii) does not admit the allegation in paragraph 225A(c)(iii) because of the matters pleaded in the following subparagraph;~~

~~(iv) in respect of paragraph 225A(e)(iv):~~

~~1. admits that the Hopevale ledger card numbered 391939 records the sum of £30/- having been deposited on or about 31 May 1959 in respect of the description “W 30/1/59—24 days”;~~

~~2. otherwise does not admit the allegation because the sum of £30 is equal to or greater than the sum payable for the period of time worked, including pocket money that the ledger card stated was payable to the Applicant;~~

~~(d) for paragraph 225A(d):~~

~~(i) in respect of paragraph 225A(d)(i), says that the period of 20 days from 8 April 1959 expired on 27 April 1959;~~

~~(ii) for paragraph 225A(d)(ii), admits that the ledger card recorded Mr Elmes as the employer but otherwise does not admit the allegation pending discovery taking place;~~

~~(iii) does not admit the allegation in paragraph 225A(d)(iii) because of the matters pleaded in paragraph (e)(iv) below;~~

~~(e) for paragraph 225A(e):~~

~~(i) admits the allegations paragraph 225A(e)(i) and says that the period of 17 days on and from 1 May 1959 expired on 17 May 1959;~~

~~(ii) for paragraph 225A(e)(ii), admits that the ledger card recorded Mr Elmes as the employer but otherwise does not admit the allegation pending discovery taking place;~~

~~(iii) in respect of paragraph 225A(e)(iii), refers to the matters pleaded in the following subparagraph (iv);~~

~~(iv) in respect of paragraph 225A(e)(iv):~~

~~1. admits that Hopevale ledger card number 391940 records the sum of £52/8/4 as being deposited on or about 30 September 1959 in respect of "W 8/4 20/5/59";~~

~~2. otherwise does not admit the allegation because the Respondent is unable to produce a receipt for the payment;~~

~~(f) for paragraph 225A(f):~~

~~(i) does not admit the allegation in paragraph 225A(f)(i)(1) because Stareke Graziers is also listed in the relevant "address" column of ledger card 391940;~~

~~(ii) admits the allegation in paragraph 225A(f)(i)(2) but says that the 10 day period expired on 10 July 1959 as pleaded in paragraph 225A(f) of the ASOC;~~

~~(iii) in respect of paragraph 225A(f)(ii), admits that ledger card number 391940 identified the amounts required to be paid in respect of the employment as paid but otherwise does not admit the allegation because of the matter pleaded in paragraph (f)(i) above;~~

~~(iv) in respect of paragraph 225A(f)(iv):~~

~~1. admits that ledger card number 391940 records the sum of £12/10/ as being deposited on or about 30 November 1959 in respect of “W1/7—11/7/59”;~~

~~2. says that there is a discrepancy between the period of the work identified in the top part of the ledger card number 391940 and the period of work listed in the “particulars” column of that same ledger card in respect of the employment;~~

~~3. further says that in the premises of (iv)(1) and (2) above, the ledger card is inaccurate;~~

~~(g) for paragraph 225A(g):~~

~~(i) admits the allegation in paragraph 225A(g)(i) but says that the 15 day period expired on 18 November 1959 as pleaded in paragraph 225A(g) of the ASOC;~~

~~(ii) admits that the ledger card recorded the matters set out in the allegation in paragraph 225A(g)(ii) but otherwise does not admit the allegation pending discovery taking place;~~

~~(iii) does not admit the allegation in (iii) because the work was droving work;~~

~~(iv) in respect of paragraph 225A(g)(iv), admits that ledger card number 391940 identifies the amounts required to be paid in respect of the employment as paid but otherwise does not admit the allegation because of the matter pleaded in paragraph (g)i(v) below;~~

~~(v) in respect of paragraph 225A(g)(v):~~

~~1. admits that ledger card number 391940 records the sum of £18/15/ as being deposited in or about January 1960 in respect of “W4/11—20/11/59”;~~

~~2. — says that there is a discrepancy between the period of the work identified in the top part of the ledger card number 391940 in the period of work listed in the particulars column of that same ledger card in respect of the employment;~~

~~3. — further says that in the premises of (iv)(1) and (2) above, the ledger card is inaccurate;~~

~~(h) — for paragraph 225A(h):~~

~~(i) — in respect of paragraph 225A(h)(i):~~

~~1. — admits that in ledger card number 391939 Mr Wallace is shown as the employer of the Applicant pursuant to agreement number 225754 for a period of 13 days commencing on 2 May 1959;~~

~~2. — admits that the body of the ledger card number 391939 records the deposit of the sum of £16/5/— on or about 31 August 1959 in respect of “W 21/5 — 4/6/59”;~~

~~3. — otherwise does not admit the allegation because there is a conflict between the 13 day working period commencing on 2 May 1959 under alleged agreement number P22575 and the Applicant’s employment by Len Elmes during the period 1 May 1959 to 17 May 1959 under employment agreement number P22574, the latter found in ledger card number 391940;~~

~~4. — says that in the premises of subparagraph (3) above, ledger card number 391939 is inaccurate and/or ledger card number 391940 is inaccurate;~~

~~(ii) — in respect of paragraph 225A(h)(ii), admits that ledger card number 391939 records that under employment agreement number P22575 Mr Wallace was to pay the gross wage of £9/10/— per week with pocket money payable to the Applicant of £2 per week with the balance payable to the superintendent but otherwise does not admit the allegation because of the matters pleaded in paragraph (h)(i) above;~~

~~(iii) — does not admit the allegation in paragraph 225A(h)(iii) because of the matters pleaded in paragraph (h)(i) above;~~

~~(iv) — in respect of paragraph 225Aad(h)(iv) admits that the body of the ledger card number 391939 records the deposit of the sum of £16/5/— on or about 31~~

~~August 1959 in respect of “W 21/5—4/6/59” but otherwise does not admit the allegations because of the matters pleaded in paragraph (h)(i) above.~~

**G. Move to Innisfail**

112. As to paragraphs 226 to 228 of the Defence, the Applicant:

- (a) admits that the Applicant’s certificate of exemption number 2/62 was dated 18 January 1962;
- (b) says that the Applicant’s wages nevertheless continued to be managed by the Respondent, its employees or agents after 18 January 1962.

**H. Exemption under the 1939 Act**

113. As to paragraph 229 of the Defence, the Applicant:

- (a) admits that the document entitled “Report on application by aboriginal or half caste for exemption from the provisions of the Act” stamped with the date 18 December 1961 specifies that the Applicant had £17/—/— as credit in the Palm Island savings bank;
- (b) otherwise denies the allegation because of the matters pleaded in paragraphs 233 and 234 of the 3ASOC;

114. As to paragraph 230 of the Defence, the Applicant admits that there were no conditions specified as being applicable to the Applicant’s exemption ~~from the terms of the 1939 Act.~~

115. As to paragraphs 231 of the Defence, the Applicant joins issue with the Respondent’s denial therein ~~and refers to and repeats paragraph 231 of the ASOC and paragraph 99 of this pleading.~~

116. As to paragraphs 232 of the Defence, the Applicant joins issue with the Respondent’s denial therein and refers to and repeats paragraph 115 herein ~~232 of the ASOC and paragraph 99 of this pleading.~~

**I. Wages paid**

117. As to paragraph 233 of the Defence, the Applicant:

- (a) for paragraph 233(a), except where an allegation is expressly admitted herein, joins issue with the Respondent's denials therein and repeats and relies on the table at particular AA to paragraph 233(a) of the 3ASOC;
- (b) for paragraph 233(b):
  - (i) does not admit the allegation in paragraph 233(b)(i) because it is not within the Applicant's knowledge;
  - (ii) does not admit the allegation in paragraph 233(b)(ii) because the words of the taxation record for the tax year 1959/1960 are unclear;
  - (iii) in respect of paragraph 233(b)(iii):
    - 1. admits that the Applicant's name does not appear in correspondence from the superintendent of Palm Island to the Director of Native Affairs listing income tax returns for Palm Island for the years ending 30 June 1961 and 30 June 1962;
    - 2. says that the matters referred to in subparagraph (1) have no bearing on earlier years in which the Applicant was employed and was subject to the 1939 Act;
  - (iv) in respect paragraph 233(b)(iv), does not admit the allegation because it is not within the Applicant's knowledge;
  - (v) denies the allegation in paragraph 233(b)(v) because:
    - 1. the inference pleaded by the Respondent is not available on the facts pleaded by the Respondent in paragraph 233(b) of the Defence;
    - 2. the Respondent has not produced or is unable to produce correspondence from Palm Island or Hopevale from earlier years listing the tax returns prepared in respect of settlement or reserve inmates or workers;
    - 3. on the basis of the matters pleaded by the Respondent in paragraph 233(a) of the Defence the amount of wages paid to the superintendent in respect of work undertaken by the Applicant in the 1958 calendar year amounted to (on the Respondent's calculation, which is denied) £121/5/-.

118. As to paragraph 233A of the Defence:

- (a) admits that the amount of £0/10/7 is listed in ledger card number 391937 as having been deposited on 31 July 1955 but does not admit the balance of the allegation because no legible description of the deposit is provided in the ledger card;
- (b) admits that the amount of £0/4/6 is listed in ledger card number 391937 as having been deposited on 31 July 1956 but does not admit the balance of the allegation because no description in respect of the deposit is provided in the ledger card;
- (c) admits that the amount of £0/2/9 is listed in ledger card number 391938 as having been deposited on a date which appears to be 31 July 1957 but does not admit the balance of the allegation because no legible description in respect of the deposit is provided in the ledger card;
- (d) admits that the amount of £0/2/9 is listed in ledger card number 391939 as having been deposited on an unspecified date in July 1959, but does not admit the balance of the allegation because no description in respect of the deposit is provided in the ledger card;
- (e) admits that the amount of £0/12/0 is listed in ledger card number 391940 as having been deposited on what appears to be 31 July 1960, but does not admit the balance of the allegation because no description in respect of the deposit is provided in the ledger card.

119. As to paragraph 234 of the Defence, the Applicant:

- (a) joins issue with the Respondent's denial in paragraph 234(a) and repeats and relies on paragraphs 233 and 234 of the 3ASOC;
- (b) for paragraph 234(b), does not admit the allegation and says that the multiplying factor will be the subject of expert opinion evidence is under review by the expert accountant appointed by the Applicant.

**J. Withdrawal of money by the Applicant**

120. As to paragraph 237 of the Defence, the Applicant:

- (a) does not admit the allegation in paragraph 237(a) because it is not within the Applicant's knowledge;
- (b) for paragraph 237(b):
  - (i) admits the date, sheet number and amount of withdrawal in paragraphs 237(b)(i) – (vi) and (viii) to (x) but does not admit that the Applicant signed

for those withdrawals and the Applicant cannot further plead until discovery has taken place;

- (ii) admits the allegation in paragraph 237(b)(vii) except to the extent that no year is specified at the top of the withdrawal sheet and further, the Applicant does not admit that the Applicant signed for those withdrawals nor that he received the amount of any such withdrawal pending discovery taking place;
- (c) for paragraph 237(c):
  - (i) denies the allegations therein because the alleged withdrawals for each of the sums referred to in paragraph 237(b) of the Defence are listed in a column of the ledger card which refers to the “A.P.F”, being a reference to the “Aboriginal Protection Fund” or “Aboriginal Provident Fund”;
  - (ii) says that the withdrawal of £10/-/- which the Respondent alleges was made for the month ended 31 January 1957 (sheet number 3) did not coincide with the entry for “Sh 3” made on ledger card 391938 because the entry on the ledger card was made 28 February 1957;
  - (iii) says that the withdrawal of £2/-/- which the Respondent alleges was made for the month ended 31 January 1957 (sheet number 7) did not coincide with the entry for “7” made on ledger card 391938 because the entry on the ledger card was made 28 February 1957;
  - (iv) says that the withdrawal of £2/10/- which the Respondent alleges was made for the month ended 30 June 1957 (sheet number 45) did not coincide with the entry for "Sh 45” made on ledger card 391938 because the entry on the ledger card was made 31 July 1957;
  - (v) says that the withdrawal of £10/-/- which the Respondent alleges was made for the month ended 31 July 1957 (sheet number 49) did not coincide with the entry for “Sh 49” made on ledger card number 391938 because the entry on the ledger card was made 31 August 1957;
  - (vi) says that the withdrawal of £2/-/- which the Respondent alleges was made for the month ended 31 July 1957 (sheet number 40) did not coincide with the entry for “50” made on ledger card number 391938 because the entry on the ledger card was made 31 August 1957;
  - (vii) says that the withdrawal of £5/-/- which the Respondent alleges was made for the month ended 31 August 1957 (sheet number 55) did not coincide

with the entry for “Sh 55” made on ledger card number 391938 because the entry on the ledger card was made 30 September 1957;

- (viii) says that the withdrawal of £4/-/- which the Respondent alleges was made for the month ended 30 September 1957 (sheet number 64) did not coincide with the entry for “Sh 64” made on ledger card number 391938 because the entry on the ledger card was made 30 November 1957;
- (ix) says that the withdrawal of £4/-/- which the Respondent alleges was made for the month ended 31 October 1957 (sheet number 70) did not coincide with the entry for “Sh 70” made on ledger card number 391938 because the entry in the ledger card was made 31 December 1957;
- (x) says that the withdrawal of £1/-/- which the Respondent alleges was made for the month ended 31 October 1957 (sheet number 81) did not coincide with the entry for “Sh 81 (C.E)” made on ledger card number 391938 because the entry in the ledger card was made 31 December 1957;

(d) for paragraph 237(d):

- (i) admits that there is listed on withdrawal sheet number 57 (for withdrawals for the month ended 31 August 1957) a withdrawal in the Applicant’s named dated 3 July 1957 for the sum of £3/4/7 for which the Applicant (nor any other person) has not provided his mark or signature on withdrawal sheet 57 but which instead states “As per order form”;
- (ii) admits that ledger card number 391938 contains an entry for a withdrawal in the sum of £3/4/7 on 30 September 1957 for which the description provided is “[quotation mark] 57”;
- (iii) otherwise denies the allegation because the withdrawal recorded in the withdrawal sheet is recorded as having taken place on 3 July 1957 and is therefore different to the withdrawal recorded on the ledger card which is dated 30 September 1957;
- (iv) cannot further plead to the allegation because it is unclear as no particulars as to the practice alleged to have taken place are provided nor any details as to the nature of what the alleged orders were;

(e) for paragraph 237(e):

- (i) admits the allegations in paragraphs 237(e)(i), (ii) and (iv);

- (ii) does not admit the allegations in paragraphs 237(3)(iii), (v) and (vi) because it is unclear how the Respondent arrived at the figures set out in those paragraphs in light of the content of the ledger cards;
- (f) for paragraph 237(f):
  - (i) denies the allegations therein because:
    1. ~~there~~ the material facts pleaded by the Respondent do not support the inference pleaded;
    2. of the matters pleaded in paragraph (c) and (d) above;
    3. the Respondent has provided no particulars as to the factual basis of the practice alleged in paragraph 237(c) and (d) of the Defence;
  - (g) admits the allegation in paragraphs 237(g) and (h);
  - (h) does not admit the allegation in paragraph 237(i) because it is not within the knowledge of the Applicant;
  - (i) for paragraph 237(j):
    - (i) admits that the Hopevale ledger cards specify the withdrawals listed in the table in paragraph 237(j) save that:
      1. the sheet number for the withdrawal listed for 31 October 1956 is unclear and may instead refer to sheet 36;
      2. the withdrawal listed for 31 January 1959 ~~was~~ is listed in the ledger card as having been made on 31 May 1959;
      3. the withdrawal listed for 31 January 1960 does not state as such in the ledger card, for which only January 1960 is listed;
    - (ii) otherwise denies the allegations because there is no indication in the ledger card that the withdrawals are in respect of the Applicant;
  - (j) for paragraph 237(k), denies the allegations therein because none of the deductions listed therein are noted in the ledger cards as having been made for the benefit of the Applicant.

121. As to paragraph 238 of the Defence, the Applicant:

- (a) for paragraph 238(b), does not admit the allegation because the Applicant can only plead in accordance with his own experience;

- (b) denies the allegation in paragraph 238(c) because there is no such entry in the ledger card for 1956 but says there is such an entry for 31 May 1957;
- (c) admits the allegation in paragraph 238(d);
- (d) denies the allegation in paragraph 238(e) because the Applicant was working for Mossman Butchering Company at Laura for only part of August 1958 and then only until 18 August 1958;
- (e) denies the allegation in paragraph 238(f) because:
  - (i) the Applicant was not working for Mossman Butchering Company at Laura on 31 August 1958;
  - (ii) says that there is no basis for the inference pleaded by the Respondent.

122. As to paragraph 241 of the Defence, the Applicant:

- (a) for paragraph 241(a);
  - (i) repeats and relies on paragraph 120(e) of this pleading;
  - (ii) otherwise joins issue with the Respondent's denial and repeats and relies on paragraph 241 of the 3ASOC;
- (b) for paragraph 241(b), repeats and relies on the matters pleaded in paragraphs 121(b) and (c) of this pleading and otherwise denies the allegation because the ledger cards do not state that the withdrawals were made by the Applicant in the District of Laura;
- (c) for paragraph 241(c):
  - (i) admits that the Hopevale ledger card for the Applicant numbered 391940 contains the amounts specified in paragraph 241(c) of the 4Defence;
  - (ii) otherwise does not admit the allegations therein because:
    1. in respect of some of the amounts referred to in (i), the ledger cards contain notations that are not legible;
    2. the ledger cards do not specify that the Applicant himself made any withdrawal in relation to the amounts referred to in (i);
    3. the Applicant cannot plead further until discovery has taken place.
- (d) for paragraph 241(d):

- (i) repeats and relies on paragraph 120(i) of this pleading;
  - (ii) admits that the amounts set out in paragraph 237(j) of the Defence total £31/3/8;
  - (iii) otherwise does not admit the allegation because whether the deductions were made in accordance with the requirements of the 1945 regulations is not within the Applicant's knowledge;
  - (iv) cannot plead further until discovery takes place;
- (e) for paragraph 241(e):
- (i) repeats and relies on paragraph 120(j) of this pleading;
  - (ii) admits that the amounts specified in paragraph 237(k) of the Defence total £36/2/-.

123. As to paragraph 241A of the Defence, the Applicant does not admit the allegations therein because they are not within the Applicant's knowledge.

124. As to paragraph 241B of the Defence, the Applicant does not admit the allegations therein because they are not within the Applicant's knowledge ~~and cannot further plead until discovery has taken place~~ but:

- (a) says that the Respondent as trustee under both the general law and (or in the alternative) pursuant to the requirements of the 1939 Act was required to keep and maintain documents and records concerning the trust, the account and the Applicant's employment and wages as pleaded at paragraph 265(a) of the 3ASOC;
- (b) says that the Respondent as fiduciary was required to keep and maintain documents and records concerning the trust, the account and the Applicant's employment and wages as pleaded at paragraph 270(a) of the 3ASOC;
- (c) repeats and relies on paragraph 57 of the 3ASOC.

## **K. Establishment of the Trust**

124A. As to paragraph 242 of the Defence, the Applicant does not admit the allegations therein because they are matters within the knowledge of the Respondent.

125. The Applicant does not admit the allegation in paragraph 243(b) as it is not within the Applicant's knowledge and cannot further plead until discovery has taken place.

- 125A. As to paragraph 244 of the Defence, the Applicant does not admit that account S2127 was not used for payments for Aboriginals domiciled in the Somerset district, Thursday Island, other than as set out in paragraph 245A of the Defence, because it is not within the knowledge of the Applicant.
- 125B. As to paragraphs 245 and 245A(b) of the Defence, the Applicant does not admit the allegations therein because they are not within the knowledge of the Applicant.
126. As to paragraph 248 of the Defence, the Applicant does not admit the allegations therein because they are not within the Applicant's knowledge ~~and cannot further plead until discovery has taken place.~~
127. As to paragraph 250(b) of the Defence, the Applicant joins issue with the Respondent's denial therein and refers to and repeats paragraph 250 of the 3ASOC and paragraph 129 of this pleading.
- 127A. As to paragraph 249 of the Defence, the Applicant:
- (a) for paragraph 249(b), does not admit the allegations therein because they are not within the knowledge of the Applicant;
  - (b) does not plead to paragraph 249(c) because it does not contain any allegation of a material fact.
- 127B. As to paragraph 249A of the Defence, the Applicant:
- (a) denies the allegation in paragraph 249A(a)(i) because section 11(1) of the Islander Act provides as follows:  
  
*"11(1). Every island reserve shall be governed by a council comprised of such number of members (not exceeding five, including the chairman) as the protector shall fix from time to time.*  
  
*The members of the council should be called 'councillors.'*
  - (b) admits the matters pleaded in paragraph 249A(a)(ii);
  - (c) admits that the matters pleaded at paragraph 249A(a)(iii) contain a broad summary of the provisions of section 17 of the Islander Act but otherwise denies the allegation because the full import of section 17 is not conveyed in that summary;
  - (d) does not admit the allegations in paragraphs 249A(a)(iv) to (ix) because they are not matters within the Applicant's knowledge.

128. [Blank] ~~As to paragraph 251(b) and (d) of the Defence, the Applicant joins issue with the Respondent's denial therein and refers to and repeats paragraph 251 of the ASOC and paragraph 129 of this pleading.~~
129. As to paragraph 252 of the Defence, the Applicant joins issue with the denial and further:
- (a) denies the allegations in paragraphs 252(a)(i)(D), 252(a)(ii)(B2), paragraph 252(c)(i), 252(d)(iv), 252(e)(iv), 252(f)(i), 252(g)(v), paragraph 252(h)(i), 252(i)(iv), 252(ia)(iii), 252(k)(i), and paragraph 252(m)(ii) and 252(n)(iv):
- (i) because the legislation referred to therein 1945 regulations did not make any reference to, nor was the Respondent's conduct (including the conduct of its servants and agents) pursuant to that legislation, provide for the administration of that part of the property of aborigines in the exercise of the Respondent's "governmental functions" for the purposes of private law principles so far as concerns the determination of whether a private or "true" trust existed or was created;
- (ii) the Applicant repeats and relies on paragraphs 250 and 252 of the 3ASOC;
- (ab) as to paragraph 252(a):
- (i) for (i)(A), denies the allegations and repeats and relies on paragraphs 112 and 133(a) of this Reply and paragraphs 265 and 270 of the 3ASOC;
- (ii) for (i)(B), denies the allegation because (and to the extent that) the Respondent failed to repay to Group Members monies owing to them prior to 28 April 1966;
- (iii) for (ii)(C):
1. admits that the 1945 regulations did not apply to assisted Aboriginals or assisted Islanders under the 1965 Act;
2. denies the allegation and repeats and relies on paragraph 26(c) of this Reply;
- (ac) as to paragraph 252(b)(ii), says that section 21 of the Islander further said that the provisions referred to were to be read and construed with the Islander Act and shall, *mutatis mutandis*, apply and extend for the purposes of the Islander Act and that "For the purpose of so reading, construing, applying, and extending any such enactment of [the 1939 Act], but without limiting the generality of this section..."
- (ad) as to paragraph 252(c):

(i) for (c)(ii):

1. denies the allegations and repeats and relies on paragraph 26(c) of this Reply;
2. says that section 5(2) of the 1939 Act stipulated that an Islander would not be deemed to be an Aboriginal within the meaning of the 1939 Act unless the Islander resided on a reserve;

(ii) for (c)(iii):

1. says that other paragraphs of paragraph 252 of the 3ASOC contain allegations which relate to Group Members under the 1965 Act (including to Group Members whose wages and employment were previously controlled pursuant to the 1939 Act and regulations or the Islander Act and regulations);
2. says that the 1945 regulations were repealed upon the commencement of the 1966 regulations;
3. says that the 1939 Act was repealed (subject to the savings set out in section 4(2) of the 1965 Act) upon the 1965 Act commencing;

(ae) as to paragraph 252(d):

(i) for (d)(i), repeats and relies on paragraph (ab)(i) herein;

(ii) for (d)(ii), denies the allegation and repeats and relies on paragraph (ab)(ii) herein;

(af) as to paragraph 252(e):

(i) for (e)(i), repeats and relies on paragraph (ab)(i) herein;

(ii) for (e)(ii), repeats and relies on paragraph (ab)(ii) herein;

(b) as to paragraph 252(f):

~~(i) — except with respect to the meaning of “aboriginal” pleaded by the Respondent in paragraphs 252(f)(i) and (k), denies the allegations therein because of the matters pleaded in paragraph (a) above;~~

(i) for (f)(ii), repeats and relies on paragraph (ad)(i) herein;

(ii) for f(iii), repeats and relies on paragraph (ab)(ii) and (ad)(ii) herein;

(ba) as to paragraph 252(g):

- (i) for (g)(ii), denies the allegation because by virtue of sub-paragraph (c) of the definition of “Islander” in the Islander Act, a Group Member who otherwise fell under the 1939 Act may be deemed to have been an “Islander” by virtue of having lived on a “Reserve” (as defined in the Islander Act) within the contemplation of that sub-paragraph (c) and furthermore, says that the Islander regulations also applied to certain categories of Aboriginals from at least 5 April 1951;
- (ii) for (g)(iii), admits that the Islander Act was repealed (subject to the savings provisions set out in section 4(2) of the 1965 Act) upon the 1965 Act commencing, but otherwise denies the allegation and repeats and relies on paragraph (ab)(ii) herein;
- (iii) for (g)(iv), admits that section 23(1) of the Islander Act provided as pleaded;

(c) as to ~~for~~ paragraph 252(h):

- (i) for paragraph (h)(ii), repeats and relies on paragraph (ad)(i) herein ~~denies the allegations therein because of the matters pleaded in paragraph (a) above;~~
- (ii) for h(iii), repeats and relies on paragraphs (ab)(ii) and (ad)(ii) herein;

(d) as to paragraph 252(i):

- (i) for (i)(i), repeats and relies on paragraph (ab)(i) herein;
- (ii) for (i)(ii), repeats and relies on paragraph (ab)(ii) herein;

(e) for paragraph 252(j):

- (i) for (j)(i):
  1. denies the allegation therein because Part III, Division 1, Subdivision 6 of the 1945 regulations is entitled “general care and protection”;
  2. says that the s 12(7) of the 1939 Act referred to, inter alia, the “care” of aboriginals;
  3. says that Part IV of the 1939 Act is entitled “Preservation and Protection of Aboriginals”;

4. says that s 16(1) required the protector~~ion~~ to undertake the protection and management of the property of all aboriginals in the district assigned to the protector;
  5. says that the purpose of the 1939 Act as set out in s 5(1) of that Act was the “preservation and protection” of aboriginals in the State of Queensland;
- (ii) for (j)(ii) and (ia)(i), repeats and relies on paragraph (ad)(i) herein;
- (iii) for (j)(iii), (ia)(ii) and (k)(ii), repeats and relies on paragraph (ab)(ii) and (ad)(ii) herein;
- (f) for paragraph 252(l):
- (i) for (l)(ii), says that the 1939 Act and regulations make no provision for any permit for casual employment to be the form of agreement between an employer and employed Aboriginal and the Applicant repeats and relies on paragraph 45(b) of this Reply;
  - (ii) for (l)(ii), says that sections 3(c), (d) and (e) of *The Islanders’ Regulations, 1951* provided as follows:

“(c) All crews shall be signed on before the Shipping Master at Thursday Island and, irrespective of the location of recruitment of crews, they shall be discharged at Thursday Island, unless otherwise agreed to by the Director of Native Affairs.

(d) The Director of Native Affairs will issue permits to recruit Aboriginals on the East Coast of the Peninsula north of Cooktown and on the West Coast of the Peninsula and where such Aboriginals are secured, the Director of Native Affairs may permit them to work for a period of 90 days before signing Articles at Thursday Island, conditional that the wages set out in paragraph (a) of this Regulation shall operate from the day that the Aboriginal joins the vessel.

(e) Aboriginals recruited at Cooktown shall be discharged at Cooktown and wages paid to the Protector of Aboriginals, Cooktown. Aboriginals discharged in Cairns shall be paid wages in the presence of the Protector of Aboriginals, Cairns, or his accredited representative. Aboriginals discharged at ports south of Cairns shall be paid off in the presence of the Protector of Aboriginals in that town or his accredited representative.”
- (g) for paragraph 252(n)(ii):

- (i) for (n)(ii):
  - 1. admits that the 1939 Act had as its purpose the preservation and protection of aboriginals in the State of Queensland;
  - 2. otherwise denies the allegations therein because of the matters pleaded in subparagraph (a) above;
- (ii) for (n)(iii):
  - (1) says that the full title of the Islander Act was “An Act to make provision for the government of the native inhabitants of the Islands of the Torres Strait and their descendants, and for other purposes”;
  - (2) otherwise denies the allegation because of the matters set out in paragraph (a);
  - (3) says that the allegation Islander embarrassing because the premises of the allegation do not give rise to the conclusion, signified by the use of the words “and consequently the Respondent...” in paragraph 252(n)(iii) of the Defence;
- (iii) for (n)(iv), joins issue with the Respondent’s denials therein;
- (h) for paragraph 252(o):
  - (i) in respect of paragraph 252(o)(i), admits that the 1939 Act had as its purpose the preservation and protection of aboriginals in the State of Queensland but denies that that Act referred to any “scheme” as pleaded by the Respondent;
  - (ii) in respect paragraph 252(o)(ii) denies the allegations therein because s 12(3) of the 1945 regulations provided that the Director in his capacity as trustee for any aboriginal on whose behalf money was held could withdraw from such fund or funds sums as were required by the said aboriginal or were necessary for payment of his just debts, payment of which had been duly authorised by the Director or a protector;
  - (iii) in respect of paragraph 252(o)(iii), denies the allegations therein because subsection (5) of s 12 of the 1945 regulations provided, from 15 September 1956, as follows: “The Director is empowered to withdraw from the trust fund or trust funds so deposited for the purpose of the investment of the same by the Treasurer on his behalf in such manner as the Treasurer shall think fit, whether by loan to the Crown, any Crown instrumentality, any local body within the meaning of ‘The Local Bodies’ Loans Guarantee Acts, 1923 to 1936,’ or otherwise.”;

(iv) in respect paragraph 252(o)(iv) to (x), joins issue with the Respondent's deniales therein and says that none of the matters pleaded by the Respondent in those paragraphs answers the allegation pleaded at paragraph 252(o) of the 3ASOC~~the allegation therein because of the matters pleaded in paragraph (a) above.~~

130. As to paragraph 253 of the Defence, the Applicant joins issue with the Respondent's denial therein and refers to and repeats paragraph 253 of the 3ASOC and paragraph 0 of this pleading and further says that the pleading contained in paragraph 253 is not inconsistent with paragraph 250 because wages earned by an employee which are not received to the trust by virtue of the Respondent's breach of duty as trustee properly form part of the subject matter of the trust.

131. As to paragraph 254 of the Defence, the Applicant joins issue with the Respondent's denial therein.:

(a) ~~for paragraph 254(b)(i), refers to and repeats paragraph 254 of the ASOC and paragraph 129 of this pleading;~~

(b) ~~does not admit the allegations in paragraph 254(b)(ii) because it is not within the Applicant's knowledge and cannot plead further until discovery has taken place.~~

132. ~~[Blank] As to paragraph 255 of the Defence, the Applicant:~~

(a) ~~does not admit the allegations in paragraph 255(b)(ii) because they are not within the Applicant's knowledge;~~

(b) ~~denies the allegation in paragraph 255(b)(ii) because of the matters pleaded in subparagraph (a) hereof.~~

#### **L. Trustee's duties**

133. As to paragraph 256 of the Defence, the Applicant:

(aa) joins issue with the Respondent's denial in paragraph 256(a) of the Defence and repeats and relies on paragraphs 250, 252 to 254 and 256 of 3ASOC and, save as qualified below, says that the duties set out in paragraph 256 of the 3ASOC are duties of the Respondent as trustee:

(i) necessary for the proper and responsible administration of the trust and accounts; and

- (ii) which arise expressly or as a necessary result of the proper construction and in order to give effect to the requirements of the 1939 Act, the Islander Act or the 1965 Act;
- (a) for paragraph 256(b), denies the allegations therein and says that the Respondent's duties as a trustee persisted in respect of the trust property retained by the Respondent in respect of a Claimant after the point in time at which the Claimant an aborigine was no longer controlled under the 1939 Act, the Islander Act or , including the Applicant, obtained their exemption under the 1939 Act or the 1965 Act;
  - (b) as to paragraphs 256(c):
    - (i) joins issue with the Respondent's denials therein and repeats and relies on paragraph 256 of the 3ASOC;
    - (ii) for (ii) and (iii), denies the allegations therein and repeats and relies on paragraph 26(c) of this Reply;
  - (c) as to paragraph 256(ca):
    - (i) for (i):
      1. joins issue with the denials therein;
      2. denies the allegation in (ca)(i)(B) because section 13 of the 1945 regulations provided as pleaded from 23 April 1945 to 11 June 1955 and not "onwards" as the Respondent pleads;
      3. says that properly construed, section 13 of the 1945 regulations, as amended, required the Respondent to ensure that that provision was complied with;
    - (ii) for (ii), joins issue with the denial therein and repeats and relies on paragraph 26(c) of this Reply;
    - (iii) for (iii), does not admit the allegation;
  - (d) as to paragraph 256(cb):
    - (i) for (i):
      1. joins issue with the denials therein;

2. says that section 13 of the 1945 regulations was amended by a regulation made 9 June 1955 and gazetted 11 June 1955 and that such amendment was as described in (cb)(i)(B) of the Defence;
  3. says that properly construed, section 13 of the 1945 regulations, as amended, required the Respondent to ensure that that provision was complied with;
  4. says that properly construed, section 13 of the 1945 regulations, as amended, required the Respondent to ensure that that provision was complied with;
- (ii) for (ii), joins issue with the Respondent's denial and repeats and relies on paragraph 26(c) of this Reply;
  - (iii) for (iii), does not admit the allegation;
- (e) as to paragraph 256(cc):
- (i) joins issue with the Respondent's denial;
  - (ii) repeats and relies on paragraph 250 and 252 to 254 and 256 of the 3ASOC;
- (f) as to paragraph 256(cd):
- (i) for (i), joins issue with the Respondent's denial and repeats and relies on paragraph 26(c) of this Reply;
  - (ii) for (2) and (2A), joins issue with the Respondent's denial and repeats and relies on paragraphs 250 and 252 to 254 and 256 of the 3ASOC;
- (g) as to paragraphs 256(e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p), joins issue with the Respondent's denial therein.

**M. Fiduciary duty**

134. As to paragraphs 257(b) and (e) of the Defence, the Applicant joins issue with the Respondent's denials therein and refers to and repeats paragraph 257 of the 3ASOC.
135. As to paragraph 258 of the Defence, the Applicant:
- (a) joins issue with the Respondent's denials therein and refers to an repeats paragraph 258 of the 3ASOC:-

- (b) says that any alleged purpose of the 1939 Act, the Islander Act or the 1965 Act (which is not admitted) is not inconsistent with fiduciary duties being owed by the Respondent to the Applicant and Group Members in the terms pleaded in paragraph 258 of the 3ASOC;
- (c) refers to and relies on paragraph 135AA of this Reply;
- (d) says that the Respondent’s pleading at paragraph 258(c)(iii), that “Group Members who were Islander workers under the 1939 Act and 1945 regulations as applied by the Islander Act and regulations...” is embarrassing because it is inconsistent with the matters pleaded at paragraphs 41(b)(i) and (ii), 42(c), 43(c), 46(a), 46A, 46B(a), 252(a)(ii)(C), (c)(ii), (f)(ii), (g)(ii), (h)(ii), (j)(ii), 256(c)(ii) and (iii), (ca)(ii)(C) and (cb)(ii)(C) of the Defence.

135AA. As to paragraph 259 of the Defence, the Applicant:

- (a) in respect of paragraph (a), says that section 5(1) of the 1939 Act provided as follows: “5(1) The purposes of this Act shall be the preservation and protection of aboriginals in the State of Queensland.”;
- (b) in respect of paragraph (aa), denies the allegation and says that the long title of the Islander Act was “An Act to Make Provision for the Government of the Native Inhabitants of the Islands of Torres Strait and their Descendants, and for other purposes”;
- (c) in respect of paragraph (ab), denies the allegation and says that the long title of the 1965 Act was as follows: “An Act to Promote the Well-being and Progressive Development of the Aboriginal Inhabitants of the State and of the Torres Strait Islanders”;
- (d) in respect of paragraph (b), denies the allegation and repeats and relies on sub-paragraphs (a) to (c) above.

## **N Validity of payments to the Welfare fund**

135A. As to paragraph 260 of the Defence, the Applicant:

- (a) joins issue with the Respondent’s denial in paragraph 260(a) of the Defence;
- (b) for paragraph 260(b) of the Defence:

- (i) denies the allegation therein because by section 8 of the 1945 Regulations an aboriginal was not required to contribute to more than one welfare fund;
- (ii) repeats and relies upon paragraph 61 of the 3ASOC.

136. As to paragraph 261 of the Defence the Applicant:

- (a) says that:
  - (i) any payment requiring the Claimants to make a payment to the Welfare Fund under the 1945 Regulations amounted to a tax because they were not a payment for services rendered but rather a compulsory extraction of money for public purposes;
  - (ii) the 1945 regulations could not require or otherwise impose a tax on its own but rather such imposition of a tax had to be authorised by Act of Parliament;
  - (iii) despite the fact that some payments to the Welfare fund are set out in the 1945 Regulations, the requirement to make such payments are not authorised by parliament and to the extent that the regulations seek to do so those parts of the 1945 regulations are unauthorised and invalid.
- (b) deny that recovery of payments made pursuant to invalid legislation is statute barred by reason of s.10A or 10(1)(d) of the *Limitation of Actions Act 1974 (Qld) (LAA)*.

137. ~~[Blank]~~ As to paragraph 261A of the Defence, the Applicant:

- (a) joins issue with the Respondent's denial;
- (b) says that, on their proper construction, neither section 14 nor section 16 of the 1939 Act permitted nor contemplated any payment of money from the gross wages of the Applicant or Group Members to the Welfare Fund or otherwise from the accounts to the Welfare Fund;
- (c) denies that section 10A or section 10(1)(d) of the LAA has any application to the claim.

137A. As to paragraph 261B of the Defence, the Applicant:

- (a) joins issue with the Respondent's denial and repeats and relies on paragraph 137(c) of this Reply;
- (b) repeats and relies on paragraph 137(c) of this Reply.

137B. As to paragraph 261C of the Defence, the Applicant joins issue with the Respondent's denial and repeats and relies on paragraph 136(b) of this Reply.

137C. As to paragraph 261D of the Defence, the Applicant joins issue with the denial and repeats and relies on paragraphs 136(b) and 137B of this Reply.

**NA. Improper purpose and unlawful conduct**

137D. As to paragraph 261E of the Defence, the Applicant joins issue with the denial and repeats and relies on paragraphs 137, 137B and 136(b) of this Reply.

137E. As to paragraph 261F of the Defence, the Applicant:

- (a) joins issue with the Respondent's denial and repeats and relies on paragraphs 137, 137B and 136(b) of this Reply;
- (b) cannot plead to the allegation in (b) because it is uncertain what the words "do not contain any entries for such purposes" mean in circumstances where the particulars to paragraph 261F of the 3ASOC are expressed to be non-exclusive.

137F. As to paragraph 261FA of the Defence, the Applicant repeats and relies on paragraph 137(c) of this Reply.

**NB. Slavery Abolition Act**

137G. As to paragraph 261H of the Defence, the Applicant:

- (a) joins issue with the Respondent's denial;
- (b) admits that the Slavery Act took effect after 1828 but otherwise does not admit the allegations in (a) and (b);
- (c) denies the allegation in (c) because the Slavery Act was an Act of paramount force which was expressed to apply, relevantly, "throughout the British Colonies" and remained in force in Queensland during the Claim Period.

137H. As to paragraph 261I of the Defence, the Applicant joins issue with the Respondent's denial.

**O. Trust Fund - Applicant**

138. ~~[Blank] As to paragraph 263 of the Defence:~~

~~(a) — the Applicant refers to and repeats paragraph 126 of this pleading;~~

~~(b) — otherwise joins issue with the Respondent’s denials therein and repeats and relies on paragraph 263 of the ASOC.~~

**P. Breach of trust – the Applicant**

139. As to paragraph 265 of the Defence, the Applicant:

(aa) in respect of paragraph (aa):

(i) denies the Applicant was employed as pleaded as “Applicant’s Employment” in paragraph 69 of the Defence to the extent those matters are inconsistent with or contradictory to the particulars to paragraph 69 of the 3ASOC;

(ii) for paragraph (i), denies that each instance of the Applicant’s employment was permitted because the Respondent cannot produce any employment agreements for the Applicant, including any employment agreement which complied with the requirements of the 1939 Act;

(iiA) for paragraph (ii), denies the allegation because of the matters stated in (ii) herein;

(iii) for paragraph (iii), denies the allegation and repeats and relies on the particulars to paragraph 69 of the 3ASOC and paragraph (i) above;

(iv) for paragraph (iv):

1. as to (A), denies the allegation and says that, as a matter of law, the Respondent as trustee was under a duty to get in trust property, including the wages earned by the Applicant that ought to have been paid to the protector or superintendent by the Applicant’s employer;

2. as to (B), repeats and relies on paragraph (aa)(i) above and paragraphs 69, 72, 74, 75, 233 and 275 of the 3ASOC;

(v) for paragraph (v):

1. as to (A), denies the allegation and says that, as a matter of law, the Respondent as trustee was under a duty to get in trust property,

including the wages earned by the Applicant that ought to have been paid to the protector or superintendent by the Applicant's employer;

2. as to (B), repeats and relies on paragraph (aa)(i) above and paragraphs 69, 72, 74, 75, 233 and 275 of the 3ASOC;

(vi) for paragraph (vi):

1. as to (A), denies the allegation and says that, as a matter of law, the Respondent as trustee was under a duty to get in trust property, including the wages earned by the Applicant that ought to have been paid to the protector or superintendent by the Applicant's employer;

2. as to (B), repeats and relies on paragraph (aa)(i) above and paragraphs 69, 72, 74, 75, 230 to 233 and 275 of the 3ASOC;

3. as to (C), repeats and relies on paragraphs 230 to 232 of the 3ASOC;

(vii) for paragraph (vii):

1. as to (A), denies the allegation and says that, as a matter of law, the Respondent as trustee was under a duty to get in trust property, including the wages earned by the Applicant that ought to have been paid to the protector or superintendent by the Applicant's employer;

2. as to (B):

(A) says that the permit number recorded on the Hopevale protectorate ledger card for the Applicant's employment by W.H. Wallace for the period 1 February 1958 for a period of 24 days was 22522;

(B) says that any employment of the Applicant under a "permit" did not comply with section 14 of the 1939 Act and repeats and relies on paragraph 25 of this Reply;

3. as to (C), does not admit the allegation and says that any wages that may have been deposited on 31 July 1958 (which is not admitted) for work carried out by the Applicant between 13 January and 28 February 1958 was for a different period of time than that specified on the face of the permit numbered 22522;

(aab) in respect of paragraph (a)(ia), repeats and relies on paragraph 124 of this Reply and paragraph 57 of the 3ASOC;

- (a) otherwise, for paragraph 265(a), says that notwithstanding that the documentation referred to in subparagraphs (i) to (xiii) therein recorded some details of the matters pleaded in paragraph 265(a)(i) to (xiii) of the 3ASOC, those records are not complete, contained errors or omissions in respect of the Applicant's employment, and do not record or otherwise deal with all of the Applicant's employment as pleaded in the 3ASOC;
- (b) for paragraphs 265(d), (e), (f), (g), (h), (i), (j), and (k) ~~and (l)~~, joins issue with the Respondent's denials therein and repeats and relies upon paragraph 265(d) to (k) of the 3ASOC:-
- (c) in respect of paragraph (l):
- (i) joins issue with the Respondent's denial;
- (ii) for paragraph (iii), says that if the Respondent had in place a system by which discrepancies and withdrawals were monitored and superintendents and protectors were notified of discrepancies in withdrawals, that system was improper, insufficient and inadequate and failed to avert or check any fraudulent withdrawal of money from the accounts;
- (iii) for paragraph (iv), denies the allegation and says that:
1. the 1945 regulations as amended and which were further amended on 9 June 1955 provided that, relevantly, "The reason for any withdrawal exceeding the sum of £10 must be stated when reporting the transaction to Head Office";
  2. the Respondent does not plead that the relevant sheets of the Hopevale mission ledger of withdrawals referred to in particular C to paragraph 265(l) of the 3ASOC were to be, or were, used for the purpose of reporting the transactions therein to "Head Office";
  3. says that (and as is pleaded at paragraph 265(l) of the 3ASOC) it was nevertheless the case that no reason was stated on the withdrawal sheets referred to in (2) as to the reason for the withdrawal;
- (iv) for paragraph (vii), says that if the balance of the Applicant's account as at 31 May 1964 was £26/15/02 (which is denied), being the amount of the cheque provided to the Applicant as pleaded at paragraph 273 of the 3ASOC, then in the premises of the matters pleaded in paragraphs 69, 72, 74, 75, 233 and 275 of the 3ASOC, it can be inferred that the Respondent did not have in place proper or adequate control systems;

- (d) in respect of paragraph (na):
- (i) admits that the Auditor General for the State of Queensland conducted audits on the books and accounts of the Director of Native Affairs, but does not admit that those audits were regular or were conducted on each protectorate, reserve, mission reserve and settlement as the Applicant does not know the truth or otherwise of those allegations in such matters are wholly within the knowledge of the Respondent;
  - (ii) admits that the Auditor General's reports on the books and accounts of the Director of Native Affairs considered from time to time the Respondent's compliance with legislative requirements and says further that the Respondent was regularly found not to have complied with the legislative requirements;
  - (iii) denies that the Director responded to and addressed the issues raised in the Auditor General's reports as the Respondent was regularly found to have not complied with the legislative requirements.

140. [Blank] As to paragraph 269(b)(i) of the Defence, the Applicant:

- ~~(a) admits that pursuant to an RTI application he has received ledger cards in respect of Hopevale for the years 1954 to 1959;~~
- ~~(b) denies that those ledger cards contain a full record of the Applicant's employment during the years 1954 to 1959.~~

141. As to paragraph 269A of the Defence, the Applicant denies the allegations therein because:

- (a) the Applicant has pleaded at paragraph 267 of the ASOC that the Respondent's acts and omissions particularised below and which fall within the Respondent's conduct pleaded in paragraph 265 of the 3ASOC amounted to engaged in conduct in which the Respondent was morally complicit (by virtue of the particulars of knowledge particularised below), or alternatively amounted to conduct which was unconscionable (particularised below), and in the premises whereof which constituted equitable fraud and as such the exception set out in s 27(1)(a) of the LAA *Limitation of Actions Act* 1974 (or any predecessor provision) is enlivened in respect of the Applicant's claim for breach of trust, wilful default and for an account;

#### **Particulars of acts and omissions**

- A. Not paying all money received from employers as wages for the Applicant into the savings account or any other account in which the trust fund was

- kept and using that money for purposes unrelated to the Applicant (sub-paragraphs 265(b), (d)(i), (d)(iii), (d)(v), (d)(vii) and (j) of the 3ASOC):
- B. Paying money from the trust fund to the Welfare Fund (paragraph 265(d)(i) of the 3ASOC):
  - C. Paying money from the trust fund for the maintenance of aboriginal families, settlements and communities (paragraph 265(d)(iii) of the 3ASOC):
  - D. Not having in place a control system or systems which prevented the fraudulent withdrawal of money from the trust fund in circumstances where the Audit Reports for the years 1954 to 1972 drew this fact to the Respondent's attention (paragraph 265(d)(iv) of the 3ASOC):
  - E. Withdrawing money from the trust fund in order to make up a shortfall in government revenue (paragraph 265(d)(v) of the 3ASOC):
  - F. Not paying or otherwise crediting the trust fund with interest which had accrued on the savings accounts or on trust fund investments (paragraph 265(d)(vi) of the 3ASOC):
  - G. Permitting money held in the trust fund to be intermingled with the Welfare Fund (paragraph 265(d)(ii) of the 3ASOC):
  - H. Permitting loans to be made from the savings accounts for the building of hospitals in Queensland in circumstances where the interest on those loans was not paid to the trust fund (paragraph 265(d)(vii) of the 3ASOC), (together, "the actions").

**Particulars of matters which the Respondent knew or of which it ought to have been aware**

- A. Payments in and out of the savings account were the subject of annual audit prepared by the Auditor General for the Respondent and the relevant Minister. The audit reports disclosed the way in which the trust fund was being operated by the Respondent's servants or agents.
- B. Payments in and out of the Welfare Fund were the subject of annual audit prepared by the Auditor General for the Respondent and the relevant Minister. The audit reports disclosed that trust money was being transferred from the trust fund into the Welfare Fund.
- C. The payments, loans, forgiveness of loans or otherwise failures of the Respondent referred to in paragraphs 265(d)(i), (d)(ii), (d)(iii), (d)(v),

(d)(vii), (d)(viii), (h), (i), (j) and (k) of the 3ASOC were for the benefit of the Respondent.

- D. The fact that the day to day control of the savings accounts and the Welfare fund was with the Respondent or its servants or agents.
- E. The Respondent had access to all bank records and other financial documents with regard to how the trust fund was being operated.
- F. The Respondent was aware that there were complaints about the fact that the payouts from the trust fund were insufficient. In this regard the Applicant refers to the facts pleaded in paragraphs 276 and 277 of the 3ASOC.
- G. Payment equal to a full return on the trust money held by the Respondent for the Applicant in the trust fund has not being made. In this regard that Applicant relies on the facts pleaded in paragraph 275 of the 3ASOC.

#### **Particulars of unconscionability**

- A. The Respondent knew of the actions and permitted them to be undertaken and continued, or alternatively ought to have been aware of them.
- B. The Respondent did not inform the Applicant of the actions in circumstances where as trustee it should have done so.
- C. The actions resulted in financial loss to the Applicant which was contrary to the purpose of the 1939 Act and regulations and the 1965 Act and regulations.
- D. The actions resulted in the Applicant being treated differently from other citizens of the State who were not subject to the requirement of the 1939 Act and regulations and the 1965 Act and regulations.
- E. The Respondent failed to keep and maintain proper records relating to the trust or to ensure that such records were kept and maintained in circumstances where it was aware or ought to have been aware of the matters set out in particulars A to D above.
- F. The Respondent failed to make full payments to the Applicant from the trust fund despite knowing of complaints about its failure to do so (paragraph 276 and 277 of the 3ASOC).
- G. The Respondent purported to “right a wrong” (to use the language of the then Premier Beattie in his ministerial statement to the Queensland Parliament on 16 May 2002) in making a payment to the Applicant by

means of the reparations scheme but in doing so did not calculate or attempt to calculate the full amount of money owed by the Respondent to the Applicant (paragraphs 279 to 320 of the 3ASOC);

- (b) ~~the Applicant has pleaded at paragraph 268 of the ASOC that~~ in the alternative to (a), the Respondent retains trust property (being the balance of the Applicant's wages which were paid by his employers to the superintendents and not repaid to him, together with accretions thereon) or retains possession of the proceeds of the use of the trust property fund and as such the exception set out in s 27(1)(b) of the LAA *Limitation of Actions Act* 1974 (or any predecessor provision) is enlivened in respect of the Applicant's claim for breach of trust, willful default and for an account;
- (c) the Respondent as trustee is under a continuing duty to account in equity when called upon to do so which subsists so long as the Respondent is in possession of the trust property, which the Applicant maintains is the case;
- (d) in the premises of the matters pleaded in (a) and/or (b) and (c) above, any limitation period which may apply by virtue of s 10 of the *LAA Limitation of Actions Act* 1974 has not expired;
- (e) in the alternative to the (a) to (d) above, the Applicant relies upon s 38 of the *LAA Limitation of Actions Act* 1974 but cannot plead further until discovery takes place.

142. As to paragraph 269B of the Defence, the Applicant:

- (a) denies that the Applicant's claim is unmaintainable owing to laches and delay because of:
  - (i) the matters pleaded in paragraph 141(c) herein;
  - (ii) the Respondent's acknowledgement shown in Ministerial statements made to the Queensland Parliament of the injustice brought about by the control of aboriginal wages and employment under earlier Queensland legislation;
  - (iii) the Respondent's establishment of the Queensland reparations scheme and the outcomes sought to be achieved by that scheme;
  - (iv) the matters pleaded in subparagraph (g)(ii) herein;
- (b) denies the allegation in paragraph 269B(a) because the continuing failure of the Respondent to account for the monies it holds on trust for the Applicant did not occur prior to 27 May 1964;

- (c) admits the allegation in paragraph 269B(b);
- (d) denies the allegation in paragraph 269B(c) and (d) because of the matters pleaded in paragraph (b) above;
- (e) denies the allegation in paragraph 269B(e) and (f) because:
  - (i) the Applicant was not in receipt of material information in respect of his claim, including ledger cards, by the dates specified therein;
  - (ii) of the matters pleaded in paragraph (b) above;
- (f) for paragraph 269B(g):
  - (i) says that the Applicant made complaint to the protector at Innisfail on or about 22 April 1964 that he was still owed wages;
  - (ii) denies the allegation because by commencing this proceeding the Applicant demonstrates that he had, and continues to have, a complaint that his wages had not been paid to him;
- (g) for paragraph 269B(h):
  - (i) says that the Applicant cannot plead to the allegation because it is unclear what “these claims” refers to;
  - (ii) says that the Applicant is an unsophisticated, elderly aboriginal man of limited education and would in any event, without the benefit of legal assistance or advice, be unlikely to make claims against the Respondent;
- (h) for paragraph 269B(i), admits that the Applicant has received payments under the reparation scheme but denies that they are in respect of the issues the substance of the claims made in the 3ASOC and refers to relies upon paragraph 168 of this pleading;
- (i) for paragraph 269B(j):
  - (i) admits that the Applicant has entered into the Deed of Agreement but only did so because it was a precondition to receiving a payment under the reparation scheme;
  - (ii) as pleaded at paragraph 321 of the 3ASOC, says that the Respondent acted unconscionably in requiring the Applicant to execute the release contained in the Deed of Agreement;

- (j) for paragraph 269B(k), says that the acceptance of “top up” payments under the reparation scheme by the Applicant after having made a claim of unlawful racial discrimination against the Respondent is irrelevant to the matters pleaded in the 3ASOC and furthermore, the Applicant is an elderly man of limited means;
- (k) for paragraph 269B(l):
  - (i) does not admit that witnesses who would have been called to give evidence in support of the Defence have died because this is not within the Applicant’s knowledge;
  - (ii) does not admit that documents have been destroyed or lost in the ordinary course as this is not within the Applicant’s knowledge;
  - (iii) says that as a trustee the Respondent had a duty to retain documents relevant to the trust and its distribution;
  - (iv) otherwise denies the allegation because any prejudice that the Respondent might suffer is as a consequence of the Respondent’s acts or omissions in failing to keep, or not prevent the destruction of, relevant records;
- (l) for paragraphs 269B(m) and (n), cannot plead to the allegations therein because they contain no allegation of a material fact;
- (m) for paragraph 269B(o):
  - (i) denies that these claims could have been brought many years ago because the Applicant, as an aboriginal man of limited means and education, lacked the financial resources to do so;
  - (ii) says that the Respondent knew or ought to have known of the matters in subparagraph (i) above.

**Q. Breach of fiduciary duty – the Applicant**

143. As to paragraph 270 of the Defence, the Applicant:

- (aa) joins issue with the Respondent’s denials therein;
- (aab) in respect of paragraph 270(aa):
  - (i) joins issue with the Respondent’s denial therein;
  - (ii) repeats and relies on paragraphs 139(aa) of this Reply;

- (aac) in respect of paragraph 270(ab), joins issue with the Respondent's denial therein;
- (a) for paragraph 270(a);-
  - (i) joins issue with the Respondent's denials therein and says that notwithstanding that the documentation referred to in subparagraphs (i) and (ii) to (xiv) therein recorded some details (which are not admitted) of the matters pleaded in paragraph 270(a)(i) to (xiv) of the 3ASOC, those records are not complete, contained errors or omissions in respect of the Applicant's employment, and do not record or otherwise deal with all of the Applicant's employment as pleaded in the 3ASOC;
  - (ii) in respect of (a)(ia), repeats and relies on paragraph 139(aab) of this Reply;
  - (iii) relies on paragraph 145(k) of this Reply and repeats and relies on paragraph 270(a) of the 3ASOC;
- (b) for paragraphs 270(b), (c), (d), (e), (f), (g), (h), (i), (j), ~~and (k) and (l)~~, joins issue with the Respondent's denials therein and repeats and relies upon paragraphs 270(b) to (l) of the 3ASOC;-
- (c) in respect of paragraph 270(l), repeats and relies on paragraph 139(c) of this Reply;
- (d) in respect of paragraph 270(ma), repeats and relies on paragraph 139(d) of this Reply.

144. As to paragraph 271AA of the Defence, the Applicant:

- (aa) says that as a matter of law there is no basis for applying to an allegation of breach of trust a limitation period by way of analogy in circumstances where section 27 of the LAA, or any applicable predecessor legislation, stipulates a statutory limitation period in respect of such breach;
- (a) otherwise denies the allegations therein because it would in all of the circumstances of the Applicant' claim be unconscionable to apply in equity a limitation period by way of analogy;-
- (b) says that the Applicant has pleaded at paragraph 141 of this Reply ~~267 of the ASOC~~ that the Respondent engaged in conduct which constituted equitable fraud and to the extent that any limitation by analogy is imposed (which is denied) then the analogous exception set out in s 27(1) of the LAA Limitation of Actions Act 1974 is enlivened in respect of the Applicant's claims based in equity for breach of fiduciary duty;

- (c) the Respondent as fiduciary was and is under a continuing duty to account in equity when called upon to do so which subsists so long as the Respondent as fiduciary is in possession of the trust property, which the Applicant maintains is the case;
- (d) in the premises of the matter pleaded in (b) above, any limitation period which may apply by analogy to s 10 or s 27 of the LAA ~~Limitation of Actions Act 1974~~ does not apply.

145. As to paragraph 271BB of the Defence, the Applicant:

- (a) denies that Applicant's claims are ~~is~~ unmaintainable owing to laches and delay because of the matters pleaded in paragraphs 141(c) and 142 of this pleading;
- (b) denies the allegation in paragraph 271BB(a) because the continuing failure of the Respondent to account for the monies it holds of trust for the Applicant did not occur prior to 27 May 1964;
- (c) admits the allegation in paragraph 271BB(b);
- (d) denies the allegation in paragraph 271BB(c) and (d) because of the matters pleaded in paragraph (b) above;
- (e) denies the allegation in paragraph 271BB(e) and (f) because:
  - (i) the Applicant was not in receipt of material information in respect of his claim, including ledger cards or other documentation the Respondent as trustee and/or fiduciary should have retained, by the dates specified therein;
  - (ii) of the matters pleaded in paragraph (b) above;
- (f) for paragraph 271BB(g):
  - (i) says that the Applicant made complaint to the protector at Innisfail on or about 22 April 1964 that he was still owed wages;
  - (ii) denies the allegation because by commencing this proceeding the Applicant demonstrates that he had, and continues to have, a complaint that his wages had not been paid to him;
- (g) for paragraph 271BB(h):
  - (i) says that the Applicant cannot plead to the allegation because it is unclear what "these claims" refers to;
  - (ii) says that the Applicant is an unsophisticated aboriginal man of limited education and means and would, without the benefit of legal assistance, be

unlikely to make the claims (or claims in the nature of those) set out in the 3ASOC against the Respondent;

- (h) for paragraph 271BB(i), admits that the Applicant has received payments under the reparation scheme the denies that they are in respect of the issues the substance of the claims made in the 3ASOC:
- (i) for paragraph 271BB(j):
  - (i) admits that the Applicant has entered into the Deed of Agreement but only did so because it was a precondition to receiving a payment under the reparation scheme;
  - (ii) as pleaded at paragraph 321 of the 3ASOC, says that the Respondent acted unconscionably in requiring the Applicant to execute the release contained in the Deed of Agreement;
- (j) for paragraph 271BB(k), says that the acceptance of “top up” payments under the reparation scheme by the Applicant after having made a claim of unlawful racial discrimination against the Respondent is irrelevant to the matters pleaded in the 3ASOC and furthermore, the Applicant is an elderly aboriginal man of limited means for whom the reparations scheme “top up” payment represented a significant amount of money;
- (k) for paragraph 271BB(l):
  - (i) does not admit that witnesses who would have been called to give evidence in support of the Defence have died because this is not within the Applicant’s knowledge;
  - (ii) does not admit that documents have been destroyed or lost in the ordinary course as this is not within the Applicant’s knowledge;
  - (iii) says that as a fiduciary the Respondent had a duty to retain documents;
  - (iv) otherwise denies the allegation because any prejudice that the Respondent might suffer is as a consequence of the Respondent’s acts or omissions in failing to keep, or not prevent the destruction of, relevant records;
- (l) for paragraphs 271BB(m) and (n), cannot plead to the allegations therein because they contain no allegation of a material fact;
- (m) for paragraph 271BB(o):

- (i) denies that these claims could have been brought many years ago because the Applicant, as an aboriginal man of limited means and education, lacked the financial resources to do so;
- (ii) says that the Respondent knew or ought to have known of the matters in subparagraph (i) above.

**QA. The Respondent's willful default or neglect**

145A. As to paragraph 271A of the Defence, the Applicant:

- (a) joins issue with the Respondent's denial;
- (b) repeats and relies on those paragraphs of this Reply pleaded in response to paragraphs 265(aa)(iv), (v), (vi), (vii), (b) to (e), (i), (k), (n) and (na) of the Defence.

145B. As to paragraph 271B of the Defence, the Applicant does not presently plead to that paragraph pending filing of a further Defence in accordance with the orders of 9 July 2018.

**R. Applicant's payout**

146. As to paragraph 272 of the Defence, the Applicant:

- (a) admits that by a letter dated 8 May 1964 the DNA stated that on the basis of the last list of balances received from Palm Island, the Applicant had a balance of £55/5/9 at 31 January 1964;
- (b) admits that the DNA requested the superintendent at Palm Island to make the balance in (a) available to the Applicant if that amount was correct;
- (c) admits that the Applicant was advanced £10 on 2 April 1964 and £10 on 6 April 1964;
- (d) otherwise does not admit the balance of the allegations because it is not within the Applicant's knowledge.

147. As to paragraph 273 of the Defence, the Applicant:

- (a) admits that the Applicant was paid the sum of £26/15/2 by way of cheque on or about 25 May 1964;

- (b) does not admit the date of the cheque because the date on the copy of the cheque provided by the Respondent is unclear;
- (c) admits the allegations in 273(b) but does not admit the allegation in (c) because it is not within the Applicant's knowledge;
- (d) in the premises of the matters pleaded in the 3ASOC, denies the allegation in paragraph 273(d) on the basis that the cheque in the sum of £26/15/2 did not constitute the balance of the Applicant's savings account.

148. [Blank] As to paragraph 274, the Applicant:

- ~~(a) admits the allegations in paragraphs 274(j) and (k);~~
- ~~(b) admits that the application for exemption indicated that the balance of the Applicant's savings account as at 18 December 1961 was £17/ / but denies that that was the balance in fact of his account;~~
- ~~(c) otherwise denies the allegations therein and joins issue with those denials and refers to and repeats paragraph 274 of the ASOC;~~

149. As to paragraph 275(b) of the Defence, the Applicant denies the allegation therein because by commencing this proceeding the Applicant demonstrates that he had, and continues to have, a complaint that his wages had not been paid to him;

## **S. Complaints by the Applicant**

150. As to paragraph 277 of the Defence, the Applicant:

- (a) denies the allegation in paragraph 277(a) because the Respondent did not direct that the Applicant be paid the amount actually due to him;
- (b) for paragraph 277(b), says that the matters pleaded in paragraph 277(b) of the 3ASOC, including the particulars thereto, were publicly available and accessible and otherwise generally known.

## **T. Applicant's loss**

150A. As to paragraph 278 of the Defence, the Applicant joins issue with the denial therein and repeats and relies on paragraph 278 of the 3ASOC and paragraphs 137E, 137G, 137H, 145A and 146 to 149 of this Reply.

**U. Reparations Scheme – general**

151. The Applicants admit paragraphs 280A and 280B of the 3ASOC.
152. The Applicants do not know and cannot admit paragraphs 280C to 280Q of the Defence.
153. As to paragraph 281 of the Defence, the Applicant admits the allegation pleaded in sub-paragraphs (b) and (c).
154. As to paragraph 282 of the Defence, the Applicant admits the allegation pleaded in subparagraph (a).
155. As to paragraphs 285 of the Defence, the Applicant says that the wording of the release set out in paragraph (b) is the same as the words pleaded in paragraph 285 of the 3ASOC and to the extent that it is implied that there is any difference that is denied.
156. The Applicant admits the correction to the 3ASOC made in paragraph 288 of the Defence.
157. As to paragraphs 291 of the Defence the Applicant:
- (a) admits the allegation pleaded in sub-paragraph (b);
  - (b) denies subparagraph (c) and repeats and relies on the facts pleaded in paragraphs 287 to 294A of the 3ASOC.
158. As to paragraphs 292 of the Defence, the Applicant denies subparagraph (b) and repeats and relies on paragraph 293 of the 3ASOC.
159. As to paragraph 294 of the Defence, the Applicant does not know and therefore cannot admit the fact pleaded in subparagraphs (c), (d) and (e) of the Defence.

**V. Reparation scheme – the Applicant**

160. As to paragraph 300 of the Defence, the Applicant:
- (a) does not know and therefore cannot admit that QAILSS conducted a consultation meeting in Townsville in mid-2002;
  - (b) says that QAILSS conducted the meeting at the Aitkenvale Aboriginal Reserve referred to in paragraph 300 of the 3ASOC.
161. As to paragraphs 304A of the Defence, the Applicant:
- (a) admits the existence of the documents described in sub-paragraphs (a) and (b);

- (b) does not admit as it does not know when those documents were published, who published those documents, how they were made available or to whom they were made available or when.
- 162. As to paragraph 304B the Applicant:
  - (a) admits that information sessions were conducted across Queensland during 2003 on the Reparations Scheme;
  - (b) does not know and therefore cannot admit whether:
    - (i) the Respondent or another entity conducted those sessions;
    - (ii) whether the information sheet and the History Sheet were distributed at those sessions.
- 163. The Applicant does not admit the allegation pleaded in paragraph 304C of the Defence as these facts are unknown to him.
- 164. The Applicant admits the facts pleaded in paragraph 304D to 304J of the Defence.
- 165. As to paragraph 304K of the Defence the Applicant:
  - (a) admits that on or about 06 October 2003 he met with a solicitor called Lynda Johnson employed by Roberts Mehmer McKee;
  - (b) says that the meeting was not a “consultation” as the Applicant was not provided with any legal advice relevant to his legal position during or as part of that meeting;
  - (c) neither during that meeting or at any time did Ms Johnson or any other lawyer retained or paid for by the Respondent provide to the Applicant any advice regarding:
    - (i) his legal rights against the State of Queensland;
    - (ii) any legal action that he could take against the State of Queensland;
    - (iii) the amount of money which had been paid to the State of Queensland by his employers,
    - (iv) whether that money was held in trust for him by the State;
    - (v) the amount of money presently held by the State on his behalf or the amount of money which the State should properly have held on his behalf.
- 166. As to paragraph 306 of the Defence the Applicant:

- (a) admits that it was not the practice at the consultation meetings conducted by QAILSS for attendees to be provided with legal advice, personal or otherwise.
- (b) denies that personal legal advice was available to be given during the meeting or during subsequent meetings as the retainer by which the Respondent employed lawyers:
  - (i) did not provide the lawyers with any or any sufficient information for the lawyer to give legal advice on the options available to a Claimant if the Deed of Agreement was not signed;
  - (ii) did not provide for the payment for any personal legal advice;
  - (iii) did not allow for the provision of personal legal advice;
  - (iv) restricted the type of information that was to be provided by the lawyers to the Claimants;
- (c) says that Ms Johnson:
  - (i) did not explain the Deed of Agreement to the Applicant save that the Applicant was informed that it was necessary to sign the Deed of Arrangement in order to receive a payment under the reparation scheme;
  - (ii) checked the Applicant's identity to make sure that he was the person entitled to claim under the reparation scheme;
  - (iii) ensured that the documents was filled in correctly by the Applicant and that it was properly executed;
- (d) does not admit as he cannot recall the facts pleaded in subparagraphs (f) and (g);
- (e) does not admit the facts pleaded in subparagraph (h) as the state of Ms Johnson's mind is unknown to him;
- (f) admits subparagraph (i).

**W. Effect of the release**

167. As to paragraph 322 of the Defence the Applicant denies the conclusion of law pleaded in sub-paragraph (b) (namely that the Applicant is ~~and eligible claimants are~~ barred from bringing and/or continuing with its claims because of the terms of the Release) on the following basis:

- (a) the Release did not release any claim in equity;
- (b) the Applicants and eligible Group Members were kept entirely in the dark as to the nature and extent of any claim they may have had against the Respondent based on the payments of their wages to the Respondent and the way in which such money was retained and kept;
- (c) that the circumstance in which the Release was procured were unconscionable with advantage being taken of an innocent, elderly and unsophisticated party who was unable to make a judgment as to what was in his best interests;
- (d) the Applicant repeats and relies on the facts pleaded in paragraphs 292, 294, 306, 314, 318 and 320 of the 3ASOC;
- (e) at the time the Applicant signed the Release:
  - (i) he was 64 years old;
  - (ii) his financial circumstances were poor;
  - (iii) he had limited education having been educated to grade 3 and had not attended secondary school;
- (f) the purposed independent legal advice given to the Applicant and other eligible claimants did not, to the Respondent's State knowledge include, information as to:
  - (i) the amount of money paid to the superintendent or protector by an employer as wages earned by the Applicant or any eligible claimant;
  - (ii) the amount of money that had been paid into the savings accounts or any other account in which the trust fund was kept, on behalf of each eligible claimant;
  - (iii) the Respondent's duty to keep records with regard to the savings accounts and payments made into and out of those accounts;
  - (iv) the way in which the money in the savings accounts or any other account in which the trust fund was kept had been used;
  - (v) the amount of interest or other accretions that had been earned by the money held into the savings accounts or any other account in which the trust fund was kept;
  - (vi) whether the Respondent was a trustee with regard to the money paid into the savings account or any other account in which the trust fund was kept;

- (vii) whether the Respondent's conduct amounted to a breach of trust with regard to the way in which the savings accounts or any other account in which the trust fund was kept were operated;
  - (viii) whether the Respondent owed fiduciary or other duties to eligible claimants with regard to how the savings accounts or any other account in which the trust fund was kept were operated; whether the Respondent had breached any duty it owed to eligible claimants and the effect of such breach;
  - (ix) the quantum of any claim that an eligible claimant might have against the Respondent.
- (g) the lawyers who were to provide independent legal advice to the Applicant and eligible claimants were not given any documents or other information by the State to enable them to determine:
- (i) the amount that had been paid into the savings or any other accounts on behalf of eligible claimants; and/or
  - (ii) the amount held in the savings or any other accounts for each eligible claimant;
  - (iii) the way in which the savings accounts or the other accounts into which the wages were paid were operated;
- (h) prior to signing the Deed of Agreement, the Applicant was not told or otherwise informed about any of the matters referred to in subparagraph (f) above;
- (i) prior to signing the Deed of Agreement, the Applicant received a document called "Advice to Claimants" on behalf of the State which was to the effect that, if he was to say "no" to the Respondent's offer:
- (i) any court case could take many years and the government had the money to oppose the case and to delay it;
  - (ii) "remember the Mabo case took 12 years to resolve";
  - (iii) although he was entitled to take the government to court, funding a court case would depend on ATSIC being given a special grant and that would depend upon legal advice as to whether the case was 'winnable';
  - (iv) if the court case was lost the cost of the case may be awarded against the person bringing the case to court.

168. The Applicant denies paragraph 322A of the Defence on the basis that the payments made under the Reparations Scheme were paid on the basis that such payments were “reparations” and were not payments based on the actual loss of individuals. As such these payments cannot be set off against any amount found owing to the plaintiff.

**X. Group members**

169. As to paragraph 323 of the Defence, the Applicant:

- (a) joins issue with the Respondent’s denials therein and repeats and relies on paragraph 265 of the 3ASOC;
- (b) in respect of paragraph (a):
  - (i) for paragraph (i), repeats and relies on paragraph 26(c) of this Reply;
  - (ii) for paragraph (ii), repeats and relies on paragraph 41 and 41A of this Reply;
  - (iii) for paragraph (iv), denies the allegation and repeats and relies on paragraphs 260 to 261F, 265(n) and 270(m) of the 3ASOC and paragraph 137(b) of this Reply;
- (c) in respect of paragraph (b):
  - (i) for paragraph (i), repeats and relies on paragraphs 261D, 261E, 265(n) and 270(m) of the 3ASOC;

170. As to paragraph 324 of the Defence, the Applicant joins issue with the Respondent’s denial and repeats and relies on paragraphs 257 and 270 of the 3ASOC.

**Y. Complaints under the AHRC Act 1986**

171. As to paragraph 333 of the Defence, the Applicant:

- (a) adopts the Respondent’s admission to paragraph 333(a); and
- (b) joins issue with Respondent’s denial to paragraph 333(b).

172. As to paragraph 334 of the Defence, the Applicant, adopts the Respondent’s admission and otherwise joins issue with the Respondent.

173. As to paragraph 335 of the Defence, the Applicant joins issue with Respondent.

174. As to paragraph 338A of the Defence, the Applicant:

(a) says that the unlawful discrimination described by the Applicant in the complaint to the AHRC was “the failure to pay the complainant the amount he is owed constitutes...racial discrimination under the RDA” and

(b) otherwise joins issue with the Respondent.

175. As to paragraph 338F of the Defence, the Applicant:

(a) denials the allegation and joins issue with the Respondent; and

(b) repeats and relies upon paragraphs 136(b), 141 and 144 above.

**Z. Relief sought**

176. As to paragraph 339 of the Defence, the Applicant joins issue with the Respondent’s denial.

Date: 26 September 2018

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Signed by Jerry Tucker, Bottoms English Lawyers Pty Ltd  
Lawyer for the Applicant

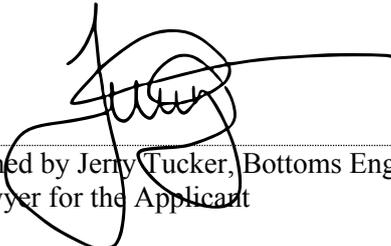
This further amended pleading was prepared by Douglas Campbell QC and Antony Newman of Counsel.

**Certificate of lawyer**

I Jerry Tucker, Lawyer for the Applicant, certify to the Court that, in relation to the Further Amended Reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Date: 26 September 2018



Signed by Jerry Tucker, Bottoms English Lawyers Pty Ltd  
Lawyer for the Applicant